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March 7, 2023

**VIA ECF**

Honorable Elizabeth A. Wolford  
United States District Judge  
100 State Street  
Rochester, New York 14614

Re: Mary Van Brunt-Piehler v. Absolute Software, Inc., Absolute Software Corporation, Geoff Haydon, Thomas Kenny and Todd Awtry  
16 Civ. 6313 (EAW) (MWP)

Dear Judge Wolford,

Enclosed hereto are Defendants' counter-designations from the deposition of Daniel Berardo.

Respectfully submitted,

*/s/ Laura Lestrade*  
Laura Lestrade

cc: J. Nelson Thomas, Esq. (via ecf)  
[nthomas@theemploymentattorneys.com](mailto:nthomas@theemploymentattorneys.com)  
Jonathan W. Ferris, Esq. (via ecf)  
[jferris@theemploymentattorneys.com](mailto:jferris@theemploymentattorneys.com)

Attorneys for Plaintiff

# EXHIBIT A

## Designations

Designation	Count
Defendant's Additional Designations	12

	Page 1	Page 3
1		
2	UNITED STATES DISTRICT COURT	
3	WESTERN DISTRICT OF NEW YORK	
4		
5	MARY VAN BRUNT-PIEHLER, )	5 THOMAS & SOLOMON
6	Plaintiff, )	6 Attorneys for Plaintiff
7	v. ) No. 16-cv-6313	7 693 EAST AVENUE
8	ABSOLUTE SOFTWARE, INC., ) (EAW) (MWP)	8 ROCHESTER, NY 14607
9	ABSOLUTE SOFTWARE )	9 BY: NELSON THOMAS, ESQ.,
10	CORPORATION, GEOFF HAYDON, )	10 via teleconference;
11	THOMAS KENNY, and TODD AWTRY)	11
12	Defendants. )	12
13	_____ )	13 DORSEY & WHITNEY
14		14 Attorneys for Defendants
15		15 51 WEST 52ND STREET
16		16 NEW YORK, NY 10019
17	DEPOSITION OF DANIEL BERARDO	17 BY: MARK SULLIVAN, ESQ.,
18	Vancouver, BC	18 LAURA LESTRADE, ESQ.
19	Wednesday, May 8, 2019	19
20		20
21		21
22		22 ALSO PRESENT:
23	Reported by:	23 Maninder Malli, Esq., Absolute Software
24	JESSICA D. ARCHIBALD	24 Mike Elderkin - videographer
25	JOB NO. 160294	25

	Page 2	Page 4
1		
2		
3		
4	Wednesday, May 8, 2019	2 IT IS HEREBY STIPULATED AND AGREED
5	10:58 a.m.	3 by and between the attorneys for the
6		4 respective parties herein, that filing and
7		5 sealing be and the same are hereby waived.
8	Deposition of DANIEL BERARDO, held at	6 IT IS FURTHER STIPULATED AND AGREED
9	the offices of DORSEY & WHITNEY LLP, 1095 West	7 that all objections, except as to the form
10	Pender Street, Suite 1070, Vancouver, BC,	8 of the question, shall be reserved to the
11	before Jessica D. Archibald, Official Reporter,	9 time of the trial.
12	authorized to administer oaths in the province	10 IT IS FURTHER STIPULATED AND AGREED
13	of British Columbia.	11 that the within deposition may be sworn to
14		12 and signed before any officer authorized
15		13 to administer an oath, with the same
16		14 force and effect as if signed and sworn to
17		15 before the Court.
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21		19 - oOo -
22		20
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		25

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Berardo\_Daniel

<p>1 D. Berardo</p> <p>2 VIDEOGRAPHER: This is the start of</p> <p>3 media number 1 in the video-recorded</p> <p>4 deposition of Daniel Berardo in the matter</p> <p>5 of Mary Van Brunt-Piehler versus Absolute</p> <p>6 Software Incorporated et al. in the United</p> <p>7 States District Court Western District of</p> <p>8 New York. The case number is 16-cv-6313.</p> <p>9 This deposition is being held at 1985 West</p> <p>10 Pender Street, Vancouver, British Columbia,</p> <p>11 Canada, on May 8th, 2019, at approximately</p> <p>12 10:59 a.m.</p> <p>13 My name is Mike Elderkin. I am the</p> <p>14 legal video specialist from TSG Reporting</p> <p>15 Incorporated headquartered at 747 3rd</p> <p>16 Avenue, New York, New York. The court</p> <p>17 reporter is Jessica Archibald, in</p> <p>18 association with TSG Reporting.</p> <p>19 Will counsel please introduce</p> <p>20 yourselves.</p> <p>21 MR. SULLIVAN: Mark Sullivan and</p> <p>22 Laura Lestrade from Dorsey &amp; Whitney on</p> <p>23 behalf of the defendants. Also present in</p> <p>24 the room is Maninder Malli, in-house</p> <p>25 counsel for Absolute.</p>	<p>Page 5</p> <p>1 D. Berardo</p> <p>2 deposition is occurring in Canada, but I --</p> <p>3 we're under -- I assume we're all in</p> <p>4 agreement that we're using FRCP rules and</p> <p>5 American rules of procedure and all that</p> <p>6 stuff?</p> <p>7 MR. SULLIVAN: Yes, we are.</p> <p>8 MR. THOMAS: Okay. All right.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Mr. Berardo, I'm Nelson Thomas, and I</p> <p>11 am the attorney representing Mary Piehler in</p> <p>12 this case. Have you ever given a deposition</p> <p>13 before?</p> <p>14 A: I have not.</p> <p>15 Q: Okay. What did you do to prepare for</p> <p>16 today's deposition?</p> <p>17 A: We met with -- with Mark and Laura on</p> <p>18 Monday, and then a couple of months back, just</p> <p>19 when we weren't sure of when the deposition</p> <p>20 date would be, we also met for a few hours.</p> <p>21 Q: Okay. And where was -- and I'm --</p> <p>22 I'm having a little bit of trouble hearing</p> <p>23 you. Can you move the microphone closer to</p> <p>24 your...</p> <p>25 A: Oh, sure.</p>	<p>Page 7</p>
<p>1 D. Berardo</p> <p>2 MR. THOMAS: Nelson Thomas at Thomas</p> <p>3 &amp; Solomon on behalf of the plaintiff, Mary</p> <p>4 Piehler.</p> <p>5 VIDEOGRAPHER: Will the court --</p> <p>6 MS. VAN BRUNT-PIEHLER: Mary Piehler,</p> <p>7 plaintiff.</p> <p>8 VIDEOGRAPHER: Will the court</p> <p>9 reporter please swear in the witness.</p> <p>10 D A N I E L B E R A R D O ,</p> <p>11 called as a witness, having been duly</p> <p>12 sworn by a Notary Public, was examined and</p> <p>13 testified as follows:</p> <p>14 EXAMINATION BY</p> <p>15 MR. THOMAS:</p> <p>16 Q: All right. Now that we're on the</p> <p>17 record, I just...</p> <p>18 For the videographer, I just want to</p> <p>19 confirm that the audio coming in through the</p> <p>20 telephone is going in okay for the playback</p> <p>21 for the video here. Is that -- are we all --</p> <p>22 are we all good with that?</p> <p>23 VIDEOGRAPHER: Yes.</p> <p>24 MR. THOMAS: Okay. Perfect. And</p> <p>25 then also, Mark, I just -- I know the</p>	<p>Page 6</p> <p>1 D. Berardo</p> <p>2 Q: Or whichever -- I don't know where</p> <p>3 the...</p> <p>4 MR. MALLI: Maybe just speak up a</p> <p>5 little bit.</p> <p>6 THE WITNESS: Sure, yeah, I can speak</p> <p>7 up a little bit.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Okay.</p> <p>10 A: Okay.</p> <p>11 Q: Great. Thank you. When you met with</p> <p>12 Laura a few months ago, where was that?</p> <p>13 A: That was -- that was here at -- at</p> <p>14 their office.</p> <p>15 Q: How long was the meeting on Monday?</p> <p>16 A: It was three hours or just under.</p> <p>17 Q: And the meeting back several months</p> <p>18 ago, what was -- how long was that?</p> <p>19 A: I don't recall specifically.</p> <p>20 Probably in the same neighbourhood, three to</p> <p>21 four hours.</p> <p>22 Q: Did you review documents as part of</p> <p>23 that process?</p> <p>24 A: We did, yes.</p> <p>25 Q: What documents did you review?</p>	<p>Page 8</p>

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<p>1 D. Berardo</p> <p>2 A: There were some emails and -- some</p> <p>3 emails. I think that's all I recall. I --</p> <p>4 there was the --</p> <p>5 Q: How many --</p> <p>6 A: There was the --</p> <p>7 Q: -- in total did you get?</p> <p>8 A: I was going to say there was the --</p> <p>9 also the -- a bit of the Absolute policy, a</p> <p>10 section of the Absolute policy. How many</p> <p>11 emails? Maybe 10 to 20 threads.</p> <p>12 Q: Besides the 10 to 20 emails and the</p> <p>13 Absolute policies, did you review anything</p> <p>14 else?</p> <p>15 A: Not that I recall off the top of my</p> <p>16 head right now.</p> <p>17 Q: Tell me a little bit about your</p> <p>18 employment history before coming to Absolute.</p> <p>19 A: Sure. Specific to HR? Or, I mean,</p> <p>20 how far do you want me to go back?</p> <p>21 Q: Why don't -- let's just -- very</p> <p>22 quickly, where did you graduate high school?</p> <p>23 A: Sure. I graduated high school in</p> <p>24 Burnaby, British Columbia, at a high school</p> <p>25 called 'Alpha Secondary.'</p>	<p>Page 9</p> <p>1 D. Berardo</p> <p>2 representative, but, essentially, I was</p> <p>3 working at Epcot in the restaurant.</p> <p>4 Q: Okay. Got it.</p> <p>5 A: Yeah.</p> <p>6 Q: Which -- what -- what country?</p> <p>7 A: Canada.</p> <p>8 Q: Okay.</p> <p>9 A: Yeah.</p> <p>10 Q: Okay. Very good. After -- after you</p> <p>11 were at Disney World, where did you go next?</p> <p>12 A: So I went to -- briefly, at a company</p> <p>13 called 'Willis.' I was there just for a few</p> <p>14 months until I went back to Marsh.</p> <p>15 Q: What did you do at Willis?</p> <p>16 A: Same -- same -- it was an office-type</p> <p>17 job; filing, mailroom, reception.</p> <p>18 Q: And then how long were you at Willis</p> <p>19 for?</p> <p>20 A: It was just a few months. Just a few</p> <p>21 months before I went back to Marsh.</p> <p>22 Q: And how long were you at Marsh?</p> <p>23 A: I was at Marsh until 2006, so it was</p> <p>24 -- it was probably early 2005 -- early 2005 to</p> <p>25 September 2006.</p>	<p>Page 11</p>
<p>1 D. Berardo</p> <p>2 Q: What year was that?</p> <p>3 A: 1997.</p> <p>4 Q: Okay. And then did you attend</p> <p>5 college after that?</p> <p>6 A: Yeah, I attended university at -- I</p> <p>7 graduated from Simon Fraser University, also</p> <p>8 in Burnaby, British Columbia.</p> <p>9 Q: And what year was that?</p> <p>10 A: I graduated in 2002.</p> <p>11 Q: And what was your first full-time</p> <p>12 employment after graduation?</p> <p>13 A: First full-time employment was an</p> <p>14 office coordinator-type job at a company</p> <p>15 called 'Marsh' in Vancouver.</p> <p>16 Q: And how long were you -- when did you</p> <p>17 start that job, and when did you end it?</p> <p>18 A: So I started that job in 2002, and</p> <p>19 then I ended in two thousand and -- 2003.</p> <p>20 Q: And what was your next position?</p> <p>21 A: Then I went to Disney World, and I</p> <p>22 worked at Disney World for a year. Yeah.</p> <p>23 Q: What did -- what did you do at Disney</p> <p>24 World?</p> <p>25 A: I was a Canadian cultural</p>	<p>Page 10</p> <p>1 D. Berardo</p> <p>2 Q: And what was your position there?</p> <p>3 A: Same type of position; office</p> <p>4 coordinator.</p> <p>5 Q: All right. And then what was your</p> <p>6 next position?</p> <p>7 A: So -- but I should say during this</p> <p>8 time, I was in -- I was also in school. I was</p> <p>9 in -- part-time taking a management</p> <p>10 certificate in human resources, so -- in 2005</p> <p>11 through 2007. In 2006, I -- I moved to a</p> <p>12 company called 'Radical Entertainment' in</p> <p>13 Vancouver.</p> <p>14 Q: What do they do?</p> <p>15 A: Video games.</p> <p>16 Q: Okay. And what was your role there?</p> <p>17 A: I was an HR -- HR coordinator. I</p> <p>18 started off as an HR coordinator.</p> <p>19 Q: And how long were you at Radical</p> <p>20 Entertainment?</p> <p>21 A: So I was there until the very end of</p> <p>22 2010.</p> <p>23 Q: And what was your next job after</p> <p>24 that?</p> <p>25 A: So my -- my next job was at a company</p>	<p>Page 12</p>

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<p>1 D. Berardo</p> <p>2 -- it was, again, only for a couple of months</p> <p>3 before I joined Absolute. It was a mining</p> <p>4 company. The -- the name escapes me for some</p> <p>5 reason. It was a mining company in Vancouver.</p> <p>6 I was there for two and a half years. It was</p> <p>7 called 'Wardrop Engineering.' Did I -- sorry,</p> <p>8 I -- I'm not sure I said -- I was there for</p> <p>9 two and a half months.</p> <p>10 Q: Oh, okay. That's what I was going to</p> <p>11 ask. Okay.</p> <p>12 A: I may have said years. It was</p> <p>13 months.</p> <p>14 Q: Okay. It felt like two and a half</p> <p>15 years; right?</p> <p>16 A: Yeah, it did.</p> <p>17 Q: All right. Following that, you went</p> <p>18 to Absolute, and when was that?</p> <p>19 A: That was June of 2011.</p> <p>20 Q: And what was your role at Absolute?</p> <p>21 A: So I started off in June 2011 as a</p> <p>22 senior HR generalist.</p> <p>23 Q: And what was your next position?</p> <p>24 A: So my next position -- so once the</p> <p>25 head of -- the head of HR left -- I want to</p>	<p>Page 13</p> <p>1 D. Berardo</p> <p>2 HR between 2015 and 2016 --</p> <p>3 MR. SULLIVAN: Objection.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: -- at Absolute; right?</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: No, there was a -- I</p> <p>8 would say there -- there was a turnover</p> <p>9 once I had left in 2016. Not -- not</p> <p>10 during --</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: What -- what prompted --</p> <p>13 A: -- 2015.</p> <p>14 Q: -- that? What prompted that?</p> <p>15 A: My departure.</p> <p>16 Q: And what -- what about your departure</p> <p>17 prompted the turnover?</p> <p>18 A: I -- I don't -- I don't know. I --</p> <p>19 I'm not sure, just because I wasn't at</p> <p>20 Absolute at that time.</p> <p>21 Q: Were you -- were you in touch with</p> <p>22 people who were at Absolute --</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: -- in the HR department?</p>	<p>Page 15</p>
<p>1 D. Berardo</p> <p>2 say -- it was towards the end of 2012. So</p> <p>3 when she left, I assumed the position of head</p> <p>4 of HR. My technical -- or, sorry, my -- my</p> <p>5 position was HR manager, and then subsequently</p> <p>6 promoted to HR director at some point.</p> <p>7 Q: And approximately when was that?</p> <p>8 A: Promoted to HR director, probably</p> <p>9 twenty -- 2014. Maybe mid-2014.</p> <p>10 Q: And what was your next position?</p> <p>11 A: So I just -- so I was an HR director</p> <p>12 until I left Absolute Software.</p> <p>13 Q: Let me just make sure that I have</p> <p>14 this correct.</p> <p>15 A: Sure.</p> <p>16 Q: That you were a senior HR generalist</p> <p>17 when you started in June of 2011; you became</p> <p>18 an HR manager when the head of HR left in</p> <p>19 2012; then you became head of HR; and then HR</p> <p>20 director; and then you left in 2014?</p> <p>21 A: Yeah, at the -- sorry, no, I left at</p> <p>22 the very end of 2015. So December --</p> <p>23 Q: 2015?</p> <p>24 A: Yeah, the very end of 2015.</p> <p>25 Q: Now, there was a complete turnover in</p>	<p>Page 14</p> <p>1 D. Berardo</p> <p>2 A: I was, yeah. I had a few -- couple</p> <p>3 people that I kept in touch with in the HR</p> <p>4 department.</p> <p>5 Q: What did they say to you about why --</p> <p>6 what was happening?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: I think they -- the new</p> <p>9 head of HR, they -- you know, they just</p> <p>10 weren't really getting along with her.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Was that Amanda Mallow?</p> <p>13 A: It was, yes.</p> <p>14 Q: Why did you decide to leave Absolute?</p> <p>15 A: I was head-hunted by a company in</p> <p>16 Vancouver, and it was just a good next step in</p> <p>17 my career.</p> <p>18 Q: Now, when you were at Absolute, you</p> <p>19 reported to the head of HR until -- and who</p> <p>20 was the head of HR?</p> <p>21 A: Oh, no, sorry, I -- oh, sorry, until</p> <p>22 she left. Sorry. Her name was Leah Rubin.</p> <p>23 Q: Okay.</p> <p>24 A: Yes.</p> <p>25 Q: And when you became HR manager, who</p>	<p>Page 16</p>

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1 D. Berardo  
 2 did you report to?  
 3 A: I reported in to Errol Olsen.  
 4 Q: Okay. Did you report in to Errol  
 5 Olsen the entire time until you left?  
 6 MR. SULLIVAN: Objection to form.  
 7 THE WITNESS: From -- from what I  
 8 recall, yes.  
 9 BY MR. THOMAS:  
 10 Q: And when did you officially get the  
 11 title 'head of HR'?  
 12 A: So I -- I guess I -- essentially, I  
 13 never had, officially, the title of 'head of  
 14 HR.' I was the head of HR, but -- but, again,  
 15 I was -- I was -- the first title was 'HR  
 16 manager,' and then I was subsequently promoted  
 17 to HR director.  
 18 Q: Oh, okay.  
 19 A: Yeah.  
 20 Q: So when you were -- so is it your  
 21 testimony that when you were HR manager, that  
 22 was the equivalent of head of HR?  
 23 MR. SULLIVAN: Objection to form.  
 24 THE WITNESS: I was leading the  
 25 department.

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1 D. Berardo  
 2 MR. SULLIVAN: Objection to form.  
 3 THE WITNESS: Okay.  
 4 MR. THOMAS: And, Mark, what is your  
 5 -- and just one second. I'm -- sorry to  
 6 cut you off, Dan -- or Mr. Berardo.  
 7 Mark, what is your objection?  
 8 MR. SULLIVAN: It's calling for an  
 9 opinion. It's also ambiguous.  
 10 BY MR. THOMAS:  
 11 Q: Well, let me make it clear,  
 12 Mr. Berardo. I'm asking for your observations  
 13 about what you saw in terms of Thomas Kenny  
 14 and Todd Awtry's conduct from an HR  
 15 perspective while they were at -- while you  
 16 were at Absolute with them.  
 17 MR. SULLIVAN: Objection so form.  
 18 THE WITNESS: Sorry, and specifically  
 19 when they first came in? Is that the time  
 20 frame you're asking me about.  
 21 BY MR. THOMAS:  
 22 Q: Why don't we start there and go all  
 23 the way through.  
 24 A: Sure. Okay. So -- so I -- so,  
 25 previously, I -- I don't think that we --

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1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: Okay. Did they conduct a search for  
 4 a replacement for Leah Rubin when she  
 5 departed?  
 6 A: Not that I recall.  
 7 Q: You just advanced into the position  
 8 upon her departure?  
 9 A: Correct. I mean, I was, yeah, asked  
 10 to -- to assume the role.  
 11 Q: How -- how did you feel about ABT --  
 12 how did you feel about Absolute sales culture  
 13 under Thomas Kenny and Todd Awtry during the  
 14 time that you were there?  
 15 MR. SULLIVAN: Objection to form.  
 16 THE WITNESS: Sorry, can you -- can  
 17 you clarify? What -- what do you mean by  
 18 how I felt about it? Like...  
 19 BY MR. THOMAS:  
 20 Q: What was your -- as an HR  
 21 professional, what was your --  
 22 A: Sure.  
 23 Q: -- observation about how they were  
 24 conducting themselves at the company?  
 25 A: Sure.

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1 D. Berardo  
 2 Absolute had -- or, to my knowledge, had a  
 3 sales organization that was led by people that  
 4 had come from a larger company, a larger  
 5 corporation. So I saw them coming in and  
 6 putting in some -- some more -- or some more  
 7 professional ways of -- professional ways of  
 8 conducting -- you know, running the sales  
 9 organization. Kind of that was my -- that was  
 10 my observation, is that they were -- is that  
 11 they were trying to advance the sales  
 12 organization to be a bit more of a  
 13 professionally run company. Or organization.  
 14 Q: What -- did your view of their -- the  
 15 cultures that they brought change over time?  
 16 MR. SULLIVAN: Objection to form.  
 17 THE WITNESS: Did it -- are you  
 18 asking did it change the culture of the  
 19 sales organization?  
 20 BY MR. THOMAS:  
 21 Q: No, did your view change?  
 22 A: Did my view --  
 23 Q: So they basically came in, and you  
 24 thought they brought a more professional --  
 25 tried to bring a more professional approach.

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1	D. Berardo	
2	A: It did -- it did not --	
3	Q: Was that the opinion you held the	
4	entire time --	
5	A: It --	
6	Q: -- while you were there?	
7	A: Yes, it was. Yeah.	
8	Q: What -- what other observations did	
9	you have about how they ran the sales culture	
10	at Absolute while you were there?	
11	MR. SULLIVAN: Objection to form.	
12	THE WITNESS: I don't -- is there --	
13	is there something specific -- I -- that	
14	you're looking for or? Just --	
15	BY MR. THOMAS:	
16	Q: Just -- just -- just your	
17	observations, if -- if you saw them conduct	
18	themselves in any way other than professionals	
19	during the time that you were there.	
20	MR. SULLIVAN: Objection to form.	
21	THE WITNESS: You know, not that I --	
22	not that I recall on the whole.	
23	BY MR. THOMAS:	
24	Q: What about not on the whole, more	
25	specifically?	

		Page 23
1	D. Berardo	
2	BY MR. THOMAS:	
3	Q: Do you recall times when you felt he	
4	was not conducting himself professionally?	
5	MR. SULLIVAN: Objection to form.	
6	THE WITNESS: I mean, there's --	
7	there's a -- there's a -- I don't remember	
8	anything specifically, but -- I mean, I	
9	would just be speculating without referring	
10	back to emails. It's just -- it was just a	
11	really long time ago.	
12	BY MR. THOMAS:	
13	Q: Well, from the emails you took a look	
14	at on Monday --	
15	A: Sure.	
16	Q: -- do you remember anything in there	
17	that made you think that he conducted himself	
18	in ways other than professionally, based on	
19	your observations?	
20	A: From the emails on Monday? Not that	
21	I recall, no.	
22	Q: Okay. What about Mary Piehler? What	
23	was your view of how she conducted herself	
24	from an HR point of view -- strike that.	
25	What were your observations about	

		Page 24
1	D. Berardo	
2	MR. SULLIVAN: Objection to form.	
3	THE WITNESS: I mean -- I mean, off	
4	the top of my head, I -- I can't think of a	
5	specific incident at -- at this time.	
6	BY MR. THOMAS:	
7	Q: Did you think that Mr. Awtry	
8	conducted himself in a professional manner	
9	when he was working at Absolute from a -- let	
10	me strike that.	
11	What was your observation about how	
12	Mr. Awtry conducted himself from an HR point	
13	of view during the time that he was employed	
14	at Absolute and you were there?	
15	MR. SULLIVAN: Objection to form.	
16	THE WITNESS: It -- sorry, it's hard	
17	for me to answer a question -- just an	
18	observation question with -- without	
19	knowing kind of specifically what you're --	
20	what you're asking. You know, I -- I	
21	worked with him over the course of two and	
22	a half years or so, maybe three years. I	
23	mean, again, I -- for the most part, from	
24	what I recall, he -- he always conducted	
25	himself professionally.	

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<p>1 D. Berardo</p> <p>2 be going in a round -- going around in a lot</p> <p>3 of circles. Never really taking ownership of</p> <p>4 situations. So it was -- it was, you know,</p> <p>5 generally, never her fault.</p> <p>6 Again, I preface that with saying this is</p> <p>7 just a general observation, so -- so for me to</p> <p>8 give a specific time when that happened would</p> <p>9 be difficult for me to recall right now.</p> <p>10 Q: Yeah, in speculating about it, do you</p> <p>11 remember anything?</p> <p>12 A: Any specific incidences?</p> <p>13 Q: Yes.</p> <p>14 A: Nothing off the top of my head right</p> <p>15 now.</p> <p>16 Q: Tell me a little bit about your</p> <p>17 employment since you have left Absolute.</p> <p>18 A: Sure. So I -- I went to a company</p> <p>19 called 'Hyperwallet' in Vancouver. Assumed</p> <p>20 the position of VP of people. And so I -- I</p> <p>21 have been there ever since.</p> <p>22 Q: What is your role there?</p> <p>23 A: So my role is the head of HR. I will</p> <p>24 preface that with saying that our company was</p> <p>25 acquired by PayPal, and so my role has changed</p>	Page 25	<p>1 D. Berardo</p> <p>2 the company. You know, there -- there was</p> <p>3 definitely other areas too that we worked on.</p> <p>4 Q: Do you remember the report showing</p> <p>5 serious concerns about Todd and -- Todd Awtry</p> <p>6 and Thomas Kenny's professionalism?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: So I -- I viewed -- I</p> <p>9 did view some of those documents during the</p> <p>10 review on Monday just very briefly, but I</p> <p>11 do recall there being some comments in the</p> <p>12 survey about Thomas and Todd.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Did -- did those affect -- when you</p> <p>15 saw them at the time in 2014, did you pay any</p> <p>16 attention to them in terms of your view of</p> <p>17 Thomas and Todd?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: So, sorry, can you</p> <p>20 clarify. What do you mean by in terms of</p> <p>21 my view?</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: I had asked you what your view was of</p> <p>24 Thomas --</p> <p>25 A: Oh, right.</p>	Page 27
<p>1 D. Berardo</p> <p>2 since the acquisition, since January 1st, so</p> <p>3 I'm, you know, not the VP of people. So</p> <p>4 I'm -- I'm head of people for specific -- the</p> <p>5 Hyperwallet division within PayPal.</p> <p>6 Q: Were you aware of surveys that were</p> <p>7 done of employees in 2014 to get employee</p> <p>8 feedback?</p> <p>9 A: Yes. Yeah.</p> <p>10 Q: Did any of those -- did you get the</p> <p>11 chance to see the results of those surveys?</p> <p>12 A: In 2014, yes, I did. Yeah.</p> <p>13 Q: Did those results raise any concerns</p> <p>14 with you?</p> <p>15 A: Yeah, absolutely, they did. Yeah.</p> <p>16 Q: Why?</p> <p>17 A: There was a -- there was a number of</p> <p>18 areas the company had to work on, in terms of</p> <p>19 culture -- I mean, there was -- there was</p> <p>20 other areas. I mean, we -- we came up with</p> <p>21 a -- with a list of areas that the company</p> <p>22 needed to work on, and we came up with a plan</p> <p>23 to work on them. Like, another example that</p> <p>24 comes to mind is around compensation, coming</p> <p>25 up with a professional compensation plan for</p>	Page 26	<p>1 D. Berardo</p> <p>2 Q: -- Kenny and Todd Awtry when they</p> <p>3 worked at Absolute and you worked there. Do</p> <p>4 you remember that a few minutes ago?</p> <p>5 A: I do, yes.</p> <p>6 Q: And I'm asking you, when you were</p> <p>7 there and you saw these reports about the</p> <p>8 professionalism of Thomas and Todd as reported</p> <p>9 by people within the company, to what degree,</p> <p>10 if any, did it affect your view of their</p> <p>11 professionalism?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: So from what I recall,</p> <p>14 my view didn't change. Absolute had come</p> <p>15 from an environment where our founder CEO</p> <p>16 was very heavily sales-focussed. So it was</p> <p>17 -- it was a bit of a family-type culture.</p> <p>18 And so I think I knew when we were bringing</p> <p>19 in Thomas and TK that -- sorry, 'TK,'</p> <p>20 Thomas and Todd -- that -- that there would</p> <p>21 be a shift and some resistance to the --</p> <p>22 the type of culture or the type of sales</p> <p>23 environment that they -- they would be</p> <p>24 bringing to -- into the company.</p> <p>25 BY MR. THOMAS:</p>	Page 28

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<p>1 D. Berardo</p> <p>2 Q: You said the founder of the company</p> <p>3 was very sales-focussed. Did I hear you</p> <p>4 correctly?</p> <p>5 A: I mean, from what -- yeah, I mean, I</p> <p>6 worked with him for -- until he left the</p> <p>7 company for a year and a half. And so, from</p> <p>8 what I recall, he was very sales-focussed.</p> <p>9 Q: And were Thomas Kenny and Todd Awtry</p> <p>10 less sales-focussed than him?</p> <p>11 A: No. No. I mean, just -- it was just</p> <p>12 a different -- a different approach.</p> <p>13 Q: And what -- how was that approach</p> <p>14 different?</p> <p>15 A: So I think John's -- who was the</p> <p>16 founder CEO -- he was a bit -- again, a bit</p> <p>17 more family -- to use the word -- the term</p> <p>18 'family,' but, you know, we're all in this --</p> <p>19 you know, not all in this together, but we're</p> <p>20 all part of the same family, for example. A</p> <p>21 bit difficult to describe. Whereas they came</p> <p>22 in as a bit more corporate and -- and</p> <p>23 professional and buttoned-up.</p> <p>24 Q: So you're saying Thomas Kenny and</p> <p>25 Todd Awtry came in as more professional and</p>	<p>Page 29</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: The company -- you</p> <p>4 know, the company didn't find anything in</p> <p>5 the survey that would have caused concern</p> <p>6 that would have -- you know, that would</p> <p>7 have made us take steps to change the -- or</p> <p>8 -- or to rectify the situation.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: So, for instance, when there were</p> <p>11 comments about the vision and strategy of</p> <p>12 company, and the comments that came back were</p> <p>13 things like:</p> <p>14 Thomas Kenny has not told the team</p> <p>15 what the company strategy is. Poor</p> <p>16 communicator and keeps information to</p> <p>17 himself.'</p> <p>18 The company did not view that as -- well, you</p> <p>19 didn't view that as a problem that needed to</p> <p>20 be remedied; correct?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: I can't say I didn't.</p> <p>23 I just don't recall. I mean, as I said</p> <p>24 before, there may have been conversations,</p> <p>25 and there may have been some type of -- you</p>
<p>1 D. Berardo</p> <p>2 buttoned-up?</p> <p>3 A: Correct, yes.</p> <p>4 Q: Okay. When you saw the comments</p> <p>5 about Thomas and Todd's conduct at the company</p> <p>6 in the 2014 survey, what steps did you take to</p> <p>7 remedy the problems that were -- if any, that</p> <p>8 were raised in the survey?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: I don't -- I don't</p> <p>11 recall specifically, but, you know, I --</p> <p>12 yeah, I don't -- I don't recall</p> <p>13 specifically. I'm sorry.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Do you recall generally?</p> <p>16 A: Well, I don't think that we -- you</p> <p>17 know, I would be -- I would just be</p> <p>18 speculating on -- on kind of the conversations</p> <p>19 that I -- I may have had with my boss about</p> <p>20 it, but -- but we --</p> <p>21 Q: I'm not asking you about</p> <p>22 conversations with your boss. I'm asking</p> <p>23 about steps that the company took in response</p> <p>24 to the survey regarding the professionalism or</p> <p>25 lack thereof of Thomas Kenny and Todd Awtry.</p>	<p>Page 30</p> <p>1 D. Berardo</p> <p>2 know, I -- I would be speculating. You</p> <p>3 know, the company listened to all the</p> <p>4 comments, and there may or may not have</p> <p>5 been conversations with them about</p> <p>6 communicating better.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: But you don't -- you -- sitting here</p> <p>9 today, you don't recall changing your</p> <p>10 opinion -- well, let me read you some more.</p> <p>11 A: Sure.</p> <p>12 Q: Another comment:</p> <p>13 Terrible communication from Thomas</p> <p>14 Kenny and Todd Awtry. Unclear strategy.</p> <p>15 Poor decision-making. Questioning</p> <p>16 integrity of company.'</p> <p>17 That -- that was not something that made you</p> <p>18 change your view of Thomas and Todd?</p> <p>19 A: So --</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: There were -- there</p> <p>22 were hundreds or maybe even thousands of</p> <p>23 comments in the survey, and so -- we looked</p> <p>24 at the survey as a whole, so those</p> <p>25 individual comments did not change my view.</p>

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<p>1 D. Berardo</p> <p>2 MR. THOMAS: If I could ask the court</p> <p>3 reporter to give Mr. Berardo a copy of</p> <p>4 Exhibit 67. So that was Awtry 67.</p> <p>5 THE COURT REPORTER: Do you mind if</p> <p>6 we go off the record so I can get it out of</p> <p>7 the box?</p> <p>8 MR. THOMAS: Off the record, on the</p> <p>9 record, however you would like.</p> <p>10 THE COURT REPORTER: Okay. We should</p> <p>11 go off.</p> <p>12 MR. THOMAS: If you want to go off,</p> <p>13 I'm fine with that. If you want to stay</p> <p>14 on, we can. Either way.</p> <p>15 THE COURT REPORTER: Okay. Thanks.</p> <p>16 VIDEOGRAPHER: Going off record. The</p> <p>17 time is 11:31.</p> <p>18 (PROCEEDINGS RECESSED AT 11:31?A.M.)</p> <p>19 (PROCEEDINGS RECONVENED AT 11:32?A.M.)</p> <p>20 VIDEOGRAPHER: We're back on the</p> <p>21 record. The time is 11:32.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Mr. Berardo, I'm showing you what has</p> <p>24 previously been marked as Awtry Exhibit 67.</p> <p>25 If you can take some time and look through</p>	<p>Page 33</p> <p>1 D. Berardo</p> <p>2 each department. I'm sure someone could get</p> <p>3 that information for you.</p> <p>4 Q: But that was -- Thomas and Todd were</p> <p>5 two of those people; correct?</p> <p>6 A: Thomas for sure. Todd, I would</p> <p>7 assume. But I don't know for certain.</p> <p>8 Q: All right. Go ahead and -- and you</p> <p>9 can read the report, and let me know if</p> <p>10 there's anything positive in there about</p> <p>11 either -- either of them.</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: Can I use your -- do</p> <p>14 you want me to highlight them -- do you</p> <p>15 want me to highlight any positives, and</p> <p>16 then read them to you after? Or do you</p> <p>17 want me to read them as I go?</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: Yeah, you can read them to me -- you</p> <p>20 can read them to me at the end. Yeah.</p> <p>21 A: At the end? Okay.</p> <p>22 Q: Or now. Or now, if you would like</p> <p>23 to. If you've found any.</p> <p>24 A: Sure. I will just read them as I go,</p> <p>25 then. I -- it's going to be -- it depends on</p>
<p>1 D. Berardo</p> <p>2 that. And this is -- this is a document you</p> <p>3 saw on Monday too; correct?</p> <p>4 A: It may -- it may have been. I</p> <p>5 didn't -- we didn't review it in detail. So</p> <p>6 this is -- this looks similar, yes.</p> <p>7 Q: Okay. What I would like you to do is</p> <p>8 read the document -- take your time -- and let</p> <p>9 me know if there's any positive comments in</p> <p>10 here about Thomas Kenny or Todd Awtry.</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: Okay. So you want me</p> <p>13 to read all 29 pages?</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: If you would like, yes.</p> <p>16 A: Okay.</p> <p>17 Q: Oh, one thing before you do that,</p> <p>18 Mr. Berardo, who -- ELT at Absolute refers to</p> <p>19 the 'executive leadership team'; right?</p> <p>20 A: That's correct.</p> <p>21 Q: Who was on the executive leadership</p> <p>22 team in the end of -- or, let's say, in August</p> <p>23 of 2014?</p> <p>24 A: It -- I don't -- I -- I can't recall</p> <p>25 names specifically. It would be the head of</p>	<p>Page 34</p> <p>1 D. Berardo</p> <p>2 who you ask if this is positive or not, but</p> <p>3 this -- this says:</p> <p>4 Transitional feel will start to</p> <p>5 settle nicely as the necessary roles are</p> <p>6 filled.'</p> <p>7 I'm not sure what that refers to.</p> <p>8 Q: I -- right now, I'm asking about</p> <p>9 positive comments about Thomas or Todd. Is</p> <p>10 that a positive comment about Thomas or Todd?</p> <p>11 A: It -- it may have been. It may not</p> <p>12 have been. I don't know. It doesn't -- it</p> <p>13 doesn't state the names.</p> <p>14 Q: I'm not asking you to speculate. I'm</p> <p>15 only asking you to -- when you look at -- when</p> <p>16 you look at something -- something that you</p> <p>17 know is positive about the staff.</p> <p>18 A: Sure. With their names attached?</p> <p>19 Q: I presume so, unless there's some</p> <p>20 other way you can identify that they're being</p> <p>21 referred to.</p> <p>22 A: So -- yeah, so there was nothing --</p> <p>23 nothing specific that I saw that called --</p> <p>24 called out Thomas and TK -- sorry, I just keep</p> <p>25 on saying 'Thomas and TK' -- Thomas and Todd,</p>

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<p>1 D. Berardo  2 you know, complimenting them or -- or being  3 positive.  4 Q: Okay. What was the purpose of this  5 survey?  6 A: It was to gather -- gather feedback  7 from employees on a wide range of topics and  8 to help guide kind of some key -- key  9 strategic initiatives over the course of the  10 next year or 18 months.  11 Q: And how was the information in the  12 surveys used to derive key strategic  13 decisions?  14 A: Well, we --  15 Q: Or what was the word you used? Key  16 strategic? What was it?  17 A: I don't recall what I said, sorry.  18 Strategic initiatives?  19 Q: Initiatives.  20 A: Yeah.  21 Q: So how -- how would the survey help  22 that?  23 A: We identified -- I mean, I'm --  24 I'm -- I can't remember everything that we  25 did. One of the -- one of the -- one of the</p>	<p>Page 37</p> <p>1 D. Berardo  2 about the positive, or lack thereof, comments  3 about Thomas and Todd. I would like to now  4 read you several sections from the report. I  5 will start on page DEFS1387:  6 Thomas Kenny has not told the team  7 what the corporate strategy is. Poor  8 communicator and keeps information to  9 himself.'  10 Next comment, same page:  11 Terrible communication from Thomas  12 Kenny and Todd Awtry. Unclear strategy.  13 Poor decision-making. Questioning  14 integrity of company.'  15 Turning to the next page, there's a comment:  16 Key leadership roles are leaving.  17 The wrong people. Thomas Kenny and Todd  18 Awtry have pushed out the executives; i.e.,  19 Abigail Maines. Upper management should  20 not have let this happen.'  21 Turning to page DEFS01390:  22 No manager. ELT has no integrity.  23 Thomas Kenny allows Todd Awtry to hire a  24 sibling; i.e., nepotism. Trust is broken.  25 No one will trust him.'</p>	<p>Page 39</p>
<p>1 D. Berardo  2 things --  3 Q: And I'm -- I'm sorry. I'm actually  4 asking a different -- different question.  5 At -- at a general level, why was this survey  6 helpful in deriving key strategic initiatives?  7 A: Yeah.  8 Q: How would it be used in that process?  9 A: Yeah, and I --  10 MR. SULLIVAN: Objection to form.  11 THE WITNESS: And I should say this  12 was kind of specific to the people,  13 culture, HR, not necessarily business --  14 business strategic decisions. Why it would  15 be helpful is because it -- the feedback  16 comes directly from employees, and -- and  17 we want to ensure that we have an engaged  18 workforce. And so figuring out what is --  19 what the main issues are in the company and  20 then trying to rectify them is something  21 that's important -- was important in this  22 company, but is important in any company, I  23 think.  24 BY MR. THOMAS:  25 Q: All right. Well, we -- we talked</p>	<p>Page 38</p> <p>1 D. Berardo  2 Next quote on that page:  3 No manager did more than one year.  4 Lack of communication and connection  5 between Thomas Kenny and Todd Awtry and  6 sales.'  7 Next comment, same page:  8 The new RD hiring of Kenny affected  9 ELT integrity.'  10 Turning to the next page of the survey,  11 DEFS1391 (as read):  12 Level of two-way communication from  13 the ELT has decreased greatly over the past  14 -- over the last nine months.'  15 Next page, DEFS01392:  16 Strongly supported by media manager.  17 Great deal of respect for this person.  18 Communication in Abigail Maines departure  19 was not handled properly. Felt inaccurate.  20 Thomas Kenny wanting to cover himself for  21 blame. Very typical behaviour.'  22 Turning to the next page, DEFS1393:  23 Disjointed organization. Thomas  24 Kenny and Todd Awtry messed up sales  25 organization. Ineffective multiple</p>	<p>Page 40</p>

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<p>1 D. Berardo  2 reporting for different positions.  3 Demotivated employees equals low sales.'  4 Turning to DEFS1395:  5 Current leadership of Todd Awtry and  6 Thomas Kenny not receptive to any kind of  7 feedback.'</p> <p>8 Turning to DEFS1397:  9 Had a good team leader. Abigail  10 Maines let go, who was great. What has  11 Thomas Kenny contributed? Was it worth  12 it?</p> <p>13 Next quote:  14 Staff are afraid to speak about  15 management. Not encouraged. If you speak  16 up, you will lose your job.'</p> <p>17 Next page (as read):  18 Get Abigail Maines back. Promote to  19 help and retain relationship with other  20 companies. Move -- need to move Thomas  21 Kennedy [sic] and 'sidekick' Todd Awtry,  22 who does not belong, and ensure we retain  23 the talent we already have.'</p> <p>24 And turning to page DEFS1411 (as read):  25 Current leadership of Todd and Thomas</p>	<p style="text-align: right;">Page 41</p> <p>1 D. Berardo  2 new sales manager. Claim that a local  3 candidate could not be found is essentially  4 dishonest. The sales team has serious  5 reservations about the ability to have an  6 open and honest relationship with the new  7 manager. Seem to be no efforts to brand  8 Absolute as the leader in any area -- in  9 any arena. Customers do not recognize our  10 name. Aren't seen as a leader in any of  11 our competitive spaces.'</p> <p>12 Now, given those comments about the people,  13 culture, and HR, what did you do in terms of  14 working with Thomas and Todd to derive key  15 strategic initiatives based on what saw in  16 the survey?</p> <p>17 MR. SULLIVAN: Objection to form.</p> <p>18 THE WITNESS: So -- so my role was  19 not to -- I -- I didn't have the capacity  20 to work with each individual department.</p> <p>21 My role was to work on the HR initiatives  22 for the company as a whole.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: What did Absolute do to rectify the  25 issues that were raised in the survey in</p>	<p style="text-align: right;">Page 43</p>
<p>1 D. Berardo  2 Kennedy -- Thomas Kenny grossly  3 under-qualified. Becomes more and more  4 apparent with decisions being made and the  5 direction they are taking the company. ELT  6 and the board not seriously concerned. No  7 communication from leadership team,  8 prioritization of non-impactful decisions,  9 questions around the rapid build-up of the  10 CER team. Don't currently have the  11 existing business to keep the people in a  12 position adequately occupied. The VAR  13 program is designed to increase business.  14 It has gotten off to an incredibly slow  15 start. Need to put some focus on  16 marketing. There are major concerns about  17 lack of adversity throughout the company.  18 Only have one female member of the ELT.  19 Have no female representation on the  20 management team listed on our website, nor  21 on our board. Women at Absolute are paid  22 less than their counterparts. Difficult  23 for them to advance their careers and  24 increase their earnings. Ethical question  25 regarding nepotism and the hiring of the</p>	<p style="text-align: right;">Page 42</p> <p>1 D. Berardo  2 regard to Thomas Kenny and Todd Awtry?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: I don't recall, and --  5 I -- I don't recall.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: But the purpose of the survey was to  8 have these issues raised and then rectify  9 them; right?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: In -- in general, yes.</p> <p>12 As I mentioned before, there are thousands  13 of comments, so it would be unlikely that  14 we would be able to address every single  15 comment in the survey.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: I'm not asking about every single  18 comment in the survey. I'm talking about the  19 multiple comments I just read to you. That  20 was not something Absolute chose to address?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: I don't have that  23 information. It may have been. I don't --  24 I -- I may have had conversations -- I -- I  25 would just be speculating. I don't recall.</p>	<p style="text-align: right;">Page 44</p>

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<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Well, I don't want your speculation.</p> <p>4 A: Sure.</p> <p>5 Q: I want your direct knowledge of</p> <p>6 anything that Absolute did to rectify the</p> <p>7 issues that were raised in the survey, which</p> <p>8 was one of the purposes of the survey.</p> <p>9 A: I don't --</p> <p>10 MS. LESTRADE: Objection.</p> <p>11 THE WITNESS: I don't -- I don't</p> <p>12 have -- I don't have the -- I don't recall.</p> <p>13 I don't recall what the company did,</p> <p>14 specifically.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: And you were head of HR at this time?</p> <p>17 A: That's correct.</p> <p>18 Q: And do you have any documents that</p> <p>19 would refresh your recollection of anything</p> <p>20 that occurred?</p> <p>21 A: Maybe. I mean, I don't have any</p> <p>22 documents in front of me. There may be</p> <p>23 emails. I don't recall the...</p> <p>24 Q: And you are telling -- are you saying</p> <p>25 under oath that after reading the comments in</p>	<p>Page 45</p> <p>1 D. Berardo</p> <p>2 difficult for people. And so any time --</p> <p>3 any time there's -- any time there's change</p> <p>4 in organization, there's going to be people</p> <p>5 that are -- that are not happy with that</p> <p>6 change.</p> <p>7 So -- so my understanding, when I</p> <p>8 read the survey, there obviously are</p> <p>9 various comments on different things, but</p> <p>10 when you -- when you look at it from a --</p> <p>11 from a bigger picture, it didn't change my</p> <p>12 view about Thomas and Todd coming in to</p> <p>13 kind of button up the -- the sales</p> <p>14 organization.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: What comment in here made you think</p> <p>17 they were -- they came in and buttoned up the</p> <p>18 sales organization?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: There were no comments</p> <p>21 in here that -- that did that.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Okay. And you did the survey to</p> <p>24 understand how the people and culture in HR</p> <p>25 roles were viewed within the company; right?</p>	<p>Page 47</p>
<p>1 D. Berardo</p> <p>2 these surveys, you continued to believe that</p> <p>3 Thomas Kenny and Todd Awtry brought a level of</p> <p>4 professionalism in terms of sales to Absolute?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: Yes, I did, after the</p> <p>7 survey. Correct.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Okay. What in the survey made you</p> <p>10 think they brought in a level of</p> <p>11 professionalism to the sales force at</p> <p>12 Absolute?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: So the surveys is one</p> <p>15 point in --</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Sorry, let me -- let me rephrase that</p> <p>18 question. What, if anything, in this survey</p> <p>19 led you to believe that they brought a level</p> <p>20 of professionalism to Absolute?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: I mean, the surveys at</p> <p>23 one point in time -- I -- I understood,</p> <p>24 from a holistic point of view, that change</p> <p>25 is hard for people, and it always is very</p>	<p>Page 46</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: Sorry, can you repeat</p> <p>4 that question.</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: Yes.</p> <p>7 Can the court reporter read it back,</p> <p>8 please.</p> <p>9 (REPORTER READ BACK)</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: The people and culture</p> <p>12 in HR roles. Sorry, I still don't --</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: I believe you referred to the people,</p> <p>15 culture, and HR roles earlier as being what</p> <p>16 this survey was looking at. Am I correct on</p> <p>17 that?</p> <p>18 A: People, culture, and HR roles. I</p> <p>19 mean, the -- it wasn't looking at HR roles.</p> <p>20 We were --</p> <p>21 Q: Was it looking at people and culture</p> <p>22 of the company?</p> <p>23 A: Yeah, we were -- it -- it tries to</p> <p>24 get the -- an understanding of the level of</p> <p>25 engagement within the company.</p>	<p>Page 48</p>

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<p>1 D. Berardo</p> <p>2 Q: Do you have any reason to believe the</p> <p>3 survey was done inaccurately?</p> <p>4 A: We used a third-party vendor and --</p> <p>5 who was -- who was a professional company that</p> <p>6 did surveys and had scientific backings around</p> <p>7 the questions that they asked. So there's no</p> <p>8 reason for me to believe that the way we</p> <p>9 worded the survey or how we conducted the</p> <p>10 survey was -- was incorrect.</p> <p>11 Q: Or the results are inaccurate? Did</p> <p>12 you think the results were inaccurate?</p> <p>13 A: No.</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: No, I did not.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Did you share the results of the</p> <p>18 survey with Todd Awtry?</p> <p>19 A: Yes. I mean, just from this email,</p> <p>20 it looks like I did. Wait. Hold on. Sorry.</p> <p>21 The email was sent to Thomas Kenny. So I</p> <p>22 only -- it looks like I only sent it to -- to</p> <p>23 Thomas. I don't recall if I had shared this</p> <p>24 with Todd.</p> <p>25 Q: Did -- to what degree, if any, did</p>	<p>Page 49</p> <p>1 D. Berardo</p> <p>2 are any numerical values?</p> <p>3 A: Well, it wouldn't -- there would be</p> <p>4 numerical values based on each question,</p> <p>5 asking people to rate --</p> <p>6 MR. THOMAS: Okay. Well, first of</p> <p>7 all, let me request a production of those</p> <p>8 numerical values.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: But I'm asking you, sitting here</p> <p>11 today with that survey in front of you, how</p> <p>12 does that make you feel about how Thomas and</p> <p>13 Todd were conducting themselves in terms of</p> <p>14 their employees in the sales organization?</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: Well, I -- I would -- I</p> <p>17 would -- the feedback that I would give,</p> <p>18 sitting here today, is that it seemed like</p> <p>19 communication wasn't as good as it could</p> <p>20 have been with the strategy. And so I</p> <p>21 would -- I would likely give the feedback</p> <p>22 to improve communication.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: Let me ask you -- so from an HR</p> <p>25 perspective, sitting here today, when you look</p>	<p>Page 51</p>
<p>1 D. Berardo</p> <p>2 reading the survey raise concerns in your mind</p> <p>3 about how Thomas Kenny and Todd Awtry were</p> <p>4 running their sales team?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: I can't -- I can't</p> <p>7 recall -- I can't recall what I was</p> <p>8 thinking at that time.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Sitting here today, what does it make</p> <p>11 you think about how Thomas and Todd were</p> <p>12 running their sales team?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: I mean, again, the -- I</p> <p>15 look at -- I mean, I -- I look at -- when I</p> <p>16 look at employee surveys, I look at -- you</p> <p>17 know, there -- there's a lot more than the</p> <p>18 comments as well. There -- there are</p> <p>19 the -- you know, there's the numerical</p> <p>20 values that go with each question.</p> <p>21 BY MR. THOMAS:</p> <p>22 Q: Where's the numerical values?</p> <p>23 A: I don't know. I mean, they're part</p> <p>24 of the survey, obviously.</p> <p>25 Q: Do you think -- do you know if there</p>	<p>Page 50</p> <p>1 D. Berardo</p> <p>2 at that report, what is your observation about</p> <p>3 how Thomas and Todd were conducting themselves</p> <p>4 in the sales organization?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: I mean, I -- I don't --</p> <p>7 you're asking me here today, but how they</p> <p>8 were conducting themselves was five years</p> <p>9 ago, so it's hard for me to sit here to</p> <p>10 answer that question when I'm reading a</p> <p>11 survey that's -- you know, I just don't</p> <p>12 have --</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Well, this is -- let's go through</p> <p>15 this. This is a survey you commissioned;</p> <p>16 correct?</p> <p>17 A: That's correct, yeah.</p> <p>18 Q: And you did the survey so that you</p> <p>19 could get feedback from employees; correct?</p> <p>20 A: Correct, yes.</p> <p>21 Q: And you feel the feedback was</p> <p>22 accurate?</p> <p>23 A: I mean, the -- the feedback -- the</p> <p>24 feedback were people's opinions, yes.</p> <p>25 Q: Which is what you were soliciting?</p>	<p>Page 52</p>

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<p>1 D. Berardo</p> <p>2 A: Correct, yes.</p> <p>3 Q: And you have an extensive background</p> <p>4 in human resources; correct?</p> <p>5 A: Yeah, we went through my background,</p> <p>6 so I'm not sure if you call it 'extensive' at</p> <p>7 this point, but it -- that would be -- if</p> <p>8 that's your opinion, then, okay.</p> <p>9 Q: Do you have a graduate degree in</p> <p>10 human resources?</p> <p>11 A: I have a -- I have a management</p> <p>12 certificate from BCIT.</p> <p>13 Q: In human resources?</p> <p>14 A: That's correct, yes.</p> <p>15 Q: And how long have you been doing</p> <p>16 human resources?</p> <p>17 A: Since 2006.</p> <p>18 Q: Okay. So with that as background and</p> <p>19 the survey that you commissioned to find out</p> <p>20 what -- how the sales organization was being</p> <p>21 run and that you believe is accurate, what is</p> <p>22 your view as to how Thomas Kenny and Todd</p> <p>23 Awtry were performing in terms of the sales</p> <p>24 organization?</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 53</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: And you characterized their</p> <p>4 performance as being buttoned-up and</p> <p>5 professional; correct?</p> <p>6 A: I -- that was my -- that was my</p> <p>7 opinion or my overall view.</p> <p>8 Q: Does -- does seeing this report</p> <p>9 change that?</p> <p>10 A: No. I mean, I saw the report when it</p> <p>11 came out.</p> <p>12 Q: So did your view of Thomas and Todd's</p> <p>13 performance remain just the same about them</p> <p>14 being buttoned-up and professional before</p> <p>15 reading this report as it was after?</p> <p>16 A: I mean, in general, yes, from what I</p> <p>17 recall.</p> <p>18 Q: And you took no steps in regards to</p> <p>19 the issues that were raised there?</p> <p>20 A: No, I didn't say that. I said that I</p> <p>21 don't recall the steps that were taken.</p> <p>22 Can I take a break?</p> <p>23 MR. SULLIVAN: Sure.</p> <p>24 MR. THOMAS: Yeah.</p> <p>25 VIDEOGRAPHER: Going off record. The</p>	<p>Page 55</p>
<p>1 D. Berardo</p> <p>2 THE WITNESS: So I need to say the</p> <p>3 survey was not conducted to see how the</p> <p>4 sales organization was running; it was</p> <p>5 conducted for the entire company. So</p> <p>6 it's -- it's difficult for me to answer --</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: Let's just focus on the sales --</p> <p>9 let's just focus on the sales portion of it.</p> <p>10 A: Sure. I mean, my answer hasn't</p> <p>11 changed from the last time you asked.</p> <p>12 Q: Which was that communication was</p> <p>13 lacking --</p> <p>14 A: From reading --</p> <p>15 Q: -- at least?</p> <p>16 A: From reading this, it seemed like</p> <p>17 there -- there could be improved</p> <p>18 communication. From reading the comments,</p> <p>19 yes.</p> <p>20 Q: And you remember no steps that you</p> <p>21 took or that Absolute took when you were head</p> <p>22 of HR to remedy that; correct?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: Yeah, I mean, again, I</p> <p>25 just can't remember the specifics.</p>	<p>Page 54</p> <p>1 D. Berardo</p> <p>2 time is 12:22.</p> <p>3 (PROCEEDINGS RECESSED AT 12:22?P.M.)</p> <p>4 (PROCEEDINGS RECONVENED AT 12:33 P.M.)</p> <p>5 VIDEOGRAPHER: Back on the record.</p> <p>6 The time is 12:33.</p> <p>7 MR. THOMAS: Oh, I need to take a</p> <p>8 call here. Hang on. I'll be -- I'll be</p> <p>9 right back.</p> <p>10 VIDEOGRAPHER: Going off record. The</p> <p>11 time is 12:33.</p> <p>12 (PROCEEDINGS RECESSED AT 12:33?P.M.)</p> <p>13 (PROCEEDINGS RECONVENED AT 12:38 P.M.)</p> <p>14 VIDEOGRAPHER: Back on the record.</p> <p>15 The time is 12:38.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: All right. Mr. Berardo, what would</p> <p>18 more, in your -- based on your personal</p> <p>19 knowledge, what would more accurately reflect</p> <p>20 the observations of the professionalism of</p> <p>21 Thomas Kenny and Todd Awtry's interactions</p> <p>22 with employees; what we see in the survey or</p> <p>23 your -- or your recollection five years later?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: Sorry, I don't -- I</p>	<p>Page 56</p>

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<p>1 D. Berardo</p> <p>2 don't know how to answer that question. I</p> <p>3 don't understand the question.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: What part of it don't you understand?</p> <p>6 A: Can you repeat the question.</p> <p>7 Q: Sure.</p> <p>8 Can the court reporter read it back.</p> <p>9 (REPORTER READ BACK)</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: Are we -- are you</p> <p>12 asking for my opinion?</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Not for your opinion. Based on --</p> <p>15 based on your knowledge of how well you</p> <p>16 recollect things and how well the survey was</p> <p>17 done, which do you -- which, in your</p> <p>18 understanding personally, would be more</p> <p>19 accurate?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: Well, so this -- again,</p> <p>22 the survey was taken in -- at one point in</p> <p>23 time over the course of two weeks, and my</p> <p>24 observations was over the course of two or</p> <p>25 three years, so I -- I would -- I -- you</p>	<p>Page 57</p> <p>1 D. Berardo</p> <p>2 don't know if we have a copy of it or...</p> <p>3 Q: Well, that -- by the guiding</p> <p>4 coalitions, was it -- it was performed -- it</p> <p>5 was done by the guiding coalition?</p> <p>6 A: Oh, there was -- we -- we did do a --</p> <p>7 we -- we -- we did it -- it's possible we did</p> <p>8 a -- I -- the guiding coalition was to</p> <p>9 discover what our values were at Absolute. So</p> <p>10 I -- I don't recall if that was a full survey.</p> <p>11 Q: Okay. Do you -- do you remember</p> <p>12 referring to it as a 'corporate cultural</p> <p>13 assessment survey'?</p> <p>14 A: I -- I don't recall what it was</p> <p>15 called.</p> <p>16 MR. THOMAS: Okay. We would request</p> <p>17 the production of that survey and the</p> <p>18 results of it.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Did you have any other -- were you</p> <p>21 aware that Todd Awtry performed a survey,</p> <p>22 monthly survey of his sales employees</p> <p>23 regarding their views of his performance?</p> <p>24 A: I don't -- I don't recall. Not --</p> <p>25 I'm not answering that it -- it didn't happen;</p>	<p>Page 59</p>
<p>1 D. Berardo</p> <p>2 know, I would say that my recollection</p> <p>3 overall is probably more accurate than</p> <p>4 the -- than the employee survey.</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: Do you have any reason to believe</p> <p>7 employees felt any better about Thomas and</p> <p>8 Todd in the weeks and years after the survey</p> <p>9 while you were still employed there than they</p> <p>10 did at the time the survey was taken?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: Yes. I mean, I think,</p> <p>13 from what I recall, the communication did</p> <p>14 get better. And, you know, we didn't do</p> <p>15 any formal -- unfortunately, we didn't do</p> <p>16 any -- we didn't do a follow-up survey</p> <p>17 after this before I had left Absolute,</p> <p>18 but -- but my observations were that things</p> <p>19 were better.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: Didn't you -- well, first of all,</p> <p>22 didn't you do a survey -- a culture survey</p> <p>23 June 1st, 2015?</p> <p>24 A: I -- it's -- I don't recall, but</p> <p>25 it's -- it's -- it's possible. Do we -- I</p>	<p>Page 58</p> <p>1 D. Berardo</p> <p>2 I just don't recall off the top of my head</p> <p>3 right now.</p> <p>4 Q: Is there any other data points that</p> <p>5 you can point to that would indicate employees</p> <p>6 felt that Thomas and Todd did a better job</p> <p>7 after the survey was performed --</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: -- during the time that you were</p> <p>11 there?</p> <p>12 A: Any -- any, like, surveys or any --</p> <p>13 anything that was written down?</p> <p>14 Q: Any data points whatsoever.</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: I mean, just -- just, I</p> <p>17 guess, observations, from what I recall.</p> <p>18 And --</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Did you observe at the time -- did</p> <p>21 you observe -- at the time that Exhibit --</p> <p>22 Awtry Exhibit 67 was being done, did you</p> <p>23 observe that people didn't like working with</p> <p>24 Thomas and Todd?</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 60</p>

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<p>1 D. Berardo</p> <p>2 THE WITNESS: Sorry, can -- can you</p> <p>3 repeat the --</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: And felt they were unprofessional?</p> <p>6 A: Can you repeat the question?</p> <p>7 Q: Sure.</p> <p>8 When -- well, first of all, we will</p> <p>9 request the production of the survey, monthly</p> <p>10 survey by Todd Awtry.</p> <p>11 But, additionally, let's talk about</p> <p>12 the survey. You were aware that Thomas and</p> <p>13 Todd had problems in terms of communicating</p> <p>14 with their employees, in terms of employees'</p> <p>15 view of their professionalism, in terms of</p> <p>16 employees' view of their trust in them.</p> <p>17 Correct? You were aware of -- you were aware</p> <p>18 of that; correct?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: So I -- I read the</p> <p>21 employee survey, but I wouldn't</p> <p>22 characterize it like you characterized it.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: What -- what -- what of my</p> <p>25 characterization don't you agree with?</p>	<p>Page 61</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: I don't recall. I</p> <p>3 don't remember.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: You don't recall them surprising you?</p> <p>6 A: No, I just don't recall what my</p> <p>7 reaction was.</p> <p>8 Q: Were you concerned at all about the</p> <p>9 comment that was made about how women were</p> <p>10 being treated by Absolute?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I don't -- I don't</p> <p>13 recall that -- I don't recall my reaction</p> <p>14 to that comment.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: So, now, you're -- let me just get</p> <p>17 this straight. You're head of HR when the</p> <p>18 survey comes in; correct?</p> <p>19 A: That's correct.</p> <p>20 Q: How important is it for you, as an HR</p> <p>21 head, to make sure that the company's not</p> <p>22 discriminating against women?</p> <p>23 A: That's --</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: It's very important.</p>	<p>Page 63</p>
<p>1 D. Berardo</p> <p>2 A: There were -- well, in the survey,</p> <p>3 there were people that did talk about the</p> <p>4 communication. Sorry, you also mentioned</p> <p>5 their professionalism?</p> <p>6 Q: Yes. Did you -- did you read that</p> <p>7 survey and felt the people thought they were</p> <p>8 doing a professional job?</p> <p>9 A: Sorry, when I read the survey, did I</p> <p>10 think that they were doing a professional job?</p> <p>11 Q: That people were -- didn't have any</p> <p>12 concerns about their professionalism?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: Just for -- reading it</p> <p>15 now, there were a couple comments that I</p> <p>16 read, but at -- at the time, there was</p> <p>17 nothing overall that -- that caused me</p> <p>18 great concern.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: That wasn't my question to you. My</p> <p>21 question to you was to be -- well, let me ask</p> <p>22 you -- let me change it. When you got this</p> <p>23 survey in August of 2014, did the comments</p> <p>24 about Todd and Thomas surprise you at all?</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 62</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: One of your most important</p> <p>4 requirements as head of HR?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: It's one of the -- it's</p> <p>7 one of the most important requirements.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Okay. And would you take action if</p> <p>10 you heard people saying that women were not</p> <p>11 being treated fairly at Absolute?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: Absolutely. If someone</p> <p>14 came up to me and -- and they -- they --</p> <p>15 they -- of course I would, yes.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: What happens if they put it in a</p> <p>18 survey?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: Would you take action then?</p> <p>22 A: It would --</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 Sorry.</p> <p>25 THE WITNESS: It would be very</p>	<p>Page 64</p>

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<p>1 D. Berardo</p> <p>2 difficult to take action on an anonymous</p> <p>3 survey without specifics.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: What about a complaint that women</p> <p>6 weren't being treated fairly, and they were</p> <p>7 being paid less? Would you take any action if</p> <p>8 that came to you in a survey, or would you</p> <p>9 just ignore it?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: So -- so being treated</p> <p>12 fairly, there's -- there -- there's nothing</p> <p>13 specific. If there was -- if there's</p> <p>14 something specific, I -- I definitely would</p> <p>15 look into it. Being paid fairly, again,</p> <p>16 this is -- this -- you're asking me what I</p> <p>17 would do now?</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: No, I'm asking you, as head of HR at</p> <p>20 Absolute, was it your policy or practice to</p> <p>21 act on complaints of sex discrimination when</p> <p>22 they came across your desk?</p> <p>23 A: Well, absolutely.</p> <p>24 Q: What would cause you not to act on a</p> <p>25 complaint of discrimination that came across</p>	Page 65	Page 67
<p>1 D. Berardo</p> <p>2 your desk?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: I don't know -- I'm</p> <p>5 sorry. I don't know how to answer that</p> <p>6 question.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: Can you think of any circumstances</p> <p>9 where you shouldn't act on it if it came</p> <p>10 across your desk as head of HR, a complaint</p> <p>11 about being discriminated against?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: If -- if someone came</p> <p>14 to me and...</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: I'm not talking about coming to you.</p> <p>17 I'm talking about a report in any way, shape,</p> <p>18 or form coming across your desk. Under what</p> <p>19 circumstances would you ignore it?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: I -- I mean, I don't --</p> <p>22 I mean, I can't think of a million</p> <p>23 different circumstances in my head right</p> <p>24 now. So, I mean, I can't say, absolutely</p> <p>25 certain, that there wouldn't be a case</p>	Page 66	Page 68

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<p>1 D. Berardo</p> <p>2 sorry.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: Truthfully is how I would like you to</p> <p>5 answer it.</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: Can you -- can you</p> <p>8 please repeat the question? Oh, so can you</p> <p>9 please repeat the question?</p> <p>10 MR. THOMAS: Yeah, the court reporter</p> <p>11 -- can the court reporter read it back,</p> <p>12 please.</p> <p>13 (REPORTER READ BACK)</p> <p>14 THE WITNESS: Correct. And, as I</p> <p>15 said, I don't recall.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Are you aware of any documents</p> <p>18 reflecting any action that you took whatsoever</p> <p>19 regarding the complaint about discrimination</p> <p>20 about pay disparities within Absolute?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: I don't -- I don't</p> <p>23 recall.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: It was one of the most important</p>	<p>Page 69</p> <p>1 D. Berardo</p> <p>2 Q: Is this something you should have</p> <p>3 taken action on?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: Are you asking me --</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Or is it something you would have</p> <p>8 ignored?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: Are you asking me what</p> <p>11 I would do right now?</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: No, I'm asking you at the time, under</p> <p>14 Absolute's policies, is this something that</p> <p>15 you should have taken a look at?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: Under Absolute --</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: Or is it something that you should</p> <p>20 have ignored?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: No, I -- I don't know</p> <p>23 the answer -- I don't know the answer to</p> <p>24 that. I...</p> <p>25 BY MR. THOMAS:</p>
<p>1 D. Berardo</p> <p>2 parts of your job. Is that what you had said?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: Against discrimination,</p> <p>5 yes, that's -- that is what I said.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: And the reason that you did the</p> <p>8 survey, which you believe was done accurately,</p> <p>9 was to find out what strategic initiatives</p> <p>10 needed to be done in terms of people and</p> <p>11 culture and HR at Absolute; correct?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: For -- for the -- yes,</p> <p>14 for HR and people and engagement, yes.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: And someone complained to you that</p> <p>17 women are not being paid as much as their</p> <p>18 counterparts and it's difficult for them to</p> <p>19 advance in their careers, and you can remember</p> <p>20 doing nothing about that?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: I don't recall if I --</p> <p>23 if we did or did not take any action on</p> <p>24 this. I don't recall. I'm sorry.</p> <p>25 BY MR. THOMAS:</p>	<p>Page 70</p> <p>1 D. Berardo</p> <p>2 Q: You don't know if you --</p> <p>3 A: I --</p> <p>4 Q: -- should have taken any action in</p> <p>5 response to a complaint by an employee that</p> <p>6 women are paid less than men?</p> <p>7 A: So --</p> <p>8 MR. SULLIVAN: So objection to form.</p> <p>9 THE WITNESS: So this is an anonymous</p> <p>10 survey, so -- so, again, if someone came to</p> <p>11 me -- if someone came to me, obviously, I</p> <p>12 would have taken action. You know, right</p> <p>13 now, I mean, I -- I can't think of what I</p> <p>14 would have --</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: I'm not asking you right now.</p> <p>17 A: So I -- I -- it's hard for my mind to</p> <p>18 go back five years, so that's why I'm saying I</p> <p>19 can't recall. So if you're asking me what I</p> <p>20 would do now, I can tell you. I just -- I --</p> <p>21 you know, I can't reverse my mind five years</p> <p>22 ago.</p> <p>23 Q: Why can't -- why aren't you sure</p> <p>24 about what you were supposed to have done five</p> <p>25 years ago?</p>

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<p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: Well, because I</p> <p>4 can't -- I can't recall what I did. So for</p> <p>5 me to just speculate --</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: I'm not asking you what you did. I'm</p> <p>8 asking you what you should have done.</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: Should you have taken a look at the</p> <p>12 claim that women across the board were being</p> <p>13 paid less than their counterparts at Absolute?</p> <p>14 Should you have looked at that?</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: So if I was to look at</p> <p>17 this right now, I -- I -- and someone had,</p> <p>18 you know, pointed this out specifically,</p> <p>19 I -- I would have taken a look.</p> <p>20 MR. THOMAS: Okay. We would like any</p> <p>21 documents that reflect any taking a look or</p> <p>22 any investigation or anything that was done</p> <p>23 by Mr. Berardo in regards to anything that</p> <p>24 relates to the survey, but specifically</p> <p>25 that section.</p>	<p>Page 73</p> <p>1 D. Berardo</p> <p>2 Q: But any perspective, that you're</p> <p>3 aware of?</p> <p>4 A: I mean, I can only give you my</p> <p>5 opinion.</p> <p>6 Q: Well, I'm not -- I'm not asking for</p> <p>7 your opinion. But based on your role as HR</p> <p>8 manager --</p> <p>9 A: Sure.</p> <p>10 Q: -- having conducted the survey and</p> <p>11 working at Absolute, was it appropriate for</p> <p>12 Mr. Haydon to see the names of the people who</p> <p>13 made the comments?</p> <p>14 A: Sure.</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: From any perspective?</p> <p>18 A: No. No, it would not -- it would not</p> <p>19 have been appropriate.</p> <p>20 Q: I would like to talk about Absolute's</p> <p>21 policy when you worked there in regards to you</p> <p>22 investigating complaints from employees.</p> <p>23 Okay?</p> <p>24 A: Sure.</p> <p>25 Q: Okay. Did Absolute have a policy</p>	<p>Page 75</p>
<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Do you remember giving the -- the</p> <p>4 survey to Geoff Haydon, the new CEO?</p> <p>5 A: I don't remember that, no.</p> <p>6 Q: Do you remember him requesting that</p> <p>7 he see the names of the employees who made the</p> <p>8 comments?</p> <p>9 A: I don't recall.</p> <p>10 Q: Is it possible that he did?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I mean, anything is</p> <p>13 possible. It's possible that he said that.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Should -- was the survey told to</p> <p>16 employees that it was going to be done</p> <p>17 anonymously?</p> <p>18 A: Yes, it was.</p> <p>19 Q: Would there be any reason that</p> <p>20 Mr. Haydon should have been able to see the</p> <p>21 names of the employees that made the comments?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: I mean, from my</p> <p>24 perspective, no. That's my opinion.</p> <p>25 BY MR. THOMAS:</p>	<p>Page 74</p> <p>1 D. Berardo</p> <p>2 about investigating complaints coming from</p> <p>3 employees?</p> <p>4 A: You know, I don't have the policy</p> <p>5 manual in -- in front of me, but I believe it</p> <p>6 was in the handbook.</p> <p>7 Q: What was -- what's your understanding</p> <p>8 of what that policy is?</p> <p>9 A: I don't -- I don't recall the</p> <p>10 specific policy. I'm sorry.</p> <p>11 Q: Okay. Well, let me ask you this: If</p> <p>12 someone came to you and complained about how</p> <p>13 they were being treated, was that -- did you</p> <p>14 have a responsibility to investigate that</p> <p>15 complaint?</p> <p>16 A: Absolutely. If it was discrimination</p> <p>17 or -- or harassment, absolutely, I had a</p> <p>18 responsibility.</p> <p>19 Q: Retaliation too?</p> <p>20 A: Retaliation too, absolutely.</p> <p>21 Q: Unfair treatment?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: Unfair treatment of --</p> <p>24 of -- of what?</p> <p>25 BY MR. THOMAS:</p>	<p>Page 76</p>

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<p>1 D. Berardo</p> <p>2 Q: That an employee comes and says</p> <p>3 they're being treated unfairly by their</p> <p>4 manager in the company. Do you have a duty</p> <p>5 to -- did you have a duty to investigate that?</p> <p>6 A: Based --</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: Based on their -- based</p> <p>9 on their gender or based on their age or --</p> <p>10 or based on protected grounds? Or -- or</p> <p>11 just that they're not being treated fairly</p> <p>12 in their opinion?</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Well, let's break it down into two --</p> <p>15 two categories. Let's start with a complaint</p> <p>16 on any basis. Just that I'm being treated</p> <p>17 unfairly.' Did you have an obligation to</p> <p>18 follow up to see what was going on?</p> <p>19 A: Well, I would ask the employee on --</p> <p>20 on what basis. You know, a lot of times,</p> <p>21 there's -- oftentimes, there's always</p> <p>22 disagreements between managers and employees,</p> <p>23 so I wouldn't be following up --</p> <p>24 Q: No, it wasn't -- sorry. Go ahead.</p> <p>25 A: No, I wouldn't be following -- I was</p>	<p>Page 77</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: Not that I'm -- not</p> <p>3 that I'm aware of.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: And in addition to -- did you have</p> <p>6 any obligation besides simply investigating</p> <p>7 them? Did you have a duty to remedy the</p> <p>8 problems?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: The -- I mean, the --</p> <p>11 the company to investigate and to -- and --</p> <p>12 and to remedy the situation. Not just to</p> <p>13 investigate, to substantiate the</p> <p>14 allegation. If the allegation was</p> <p>15 substantiated, then to ensure that -- that</p> <p>16 it was corrected.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: What level of harassment by a manager</p> <p>19 to their -- to their employee was okay at</p> <p>20 Absolute?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: What level of, like,</p> <p>23 sexual harassment? Are you asking about</p> <p>24 sexual harassment? Or what do you mean,</p> <p>25 'harassment'?</p>	<p>Page 79</p>
<p>1 D. Berardo</p> <p>2 just going to say I wouldn't be following up</p> <p>3 on every single -- every single, you know,</p> <p>4 management/employee disagreement, unless it</p> <p>5 was something that I had a duty to</p> <p>6 investigate.</p> <p>7 Q: And what did you consider those</p> <p>8 duties to -- the duty to investigate covered</p> <p>9 what?</p> <p>10 A: Well, anything -- anything that -- if</p> <p>11 there was someone who was being discriminated</p> <p>12 on -- based on protected grounds, any -- any</p> <p>13 sort of bullying or -- or sexual harassment.</p> <p>14 Q: You said bullying, sexual harassment,</p> <p>15 discriminated. Anything else?</p> <p>16 A: I mean, if someone came to me --</p> <p>17 any -- any sort of, like, crimes, anything --</p> <p>18 fraud, embezzlement. I mean, anything of that</p> <p>19 nature, anything illegal.</p> <p>20 Q: Would there ever be a reason for --</p> <p>21 you described the grounds that you thought you</p> <p>22 had a duty to investigate. Would there ever</p> <p>23 be a reason not to investigate those types of</p> <p>24 complaints?</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 78</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Okay. Well, let's say sexual</p> <p>4 harassment. What level of sexual harassment</p> <p>5 was okay at Absolute?</p> <p>6 A: There was no -- there was no level of</p> <p>7 sexual harassment that was okay.</p> <p>8 Q: What level of -- is it okay for a</p> <p>9 manager at Absolute just simply to harass an</p> <p>10 employee, even if it's not sexual?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I mean, I would -- I</p> <p>13 would need to you clarify what you meant by</p> <p>14 'harassment.' If you --</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: What do you mean by -- when you use</p> <p>17 the word 'harassment,' what do you mean by</p> <p>18 'harassment'?</p> <p>19 A: Well, generally, harassment is sexual</p> <p>20 harassment, if -- I mean, if a manager is</p> <p>21 stalking someone outside of work. I mean...</p> <p>22 Q: What happens if it's not sexual in</p> <p>23 nature? Is it okay to be -- for a manager to</p> <p>24 harass their employee at Absolute?</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 80</p>

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<p>1 D. Berardo</p> <p>2 THE WITNESS: Again, I -- I need to</p> <p>3 understand specifically the example that</p> <p>4 you're asking about.</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: So there are some -- some forms of</p> <p>7 harassment by a manager that might be okay?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: I -- that's not what I</p> <p>10 said.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Well, what about -- why do you -- I</p> <p>13 mean, what is confusing to you about the</p> <p>14 question?</p> <p>15 A: Well, harassment --</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: Harassment can be -- it</p> <p>18 can -- it can be defined in many different</p> <p>19 ways by many different people, so I --</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: Give me a definition of harassment</p> <p>22 that would be okay -- that someone could</p> <p>23 define something as harassment that would be</p> <p>24 okay at Absolute.</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 81</p> <p>1 D. Berardo</p> <p>2 the -- you're asking me harassment for</p> <p>3 business reasons. I don't -- I don't -- I</p> <p>4 need to understand what your definition of</p> <p>5 harassment is for me to answer that</p> <p>6 question.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: I'm going off of your definition, and</p> <p>9 you said for nonbusiness -- you -- you said</p> <p>10 'for nonbusiness reasons.' So I'm asking --</p> <p>11 I'm trying to understand what you're talking</p> <p>12 about. And so when you say nonbusiness</p> <p>13 reasons versus business reasons, what is the</p> <p>14 difference between those?</p> <p>15 A: Well, there's a lot of times --</p> <p>16 Q: In your -- in your -- in your view.</p> <p>17 A: Sure. There's a lot of times with a</p> <p>18 manager and an employee when there are</p> <p>19 uncomfortable conversations about performance;</p> <p>20 correct -- changing your performance,</p> <p>21 correcting performance. And so, you know,</p> <p>22 those -- those types of business conversations</p> <p>23 happen in companies all the time.</p> <p>24 Q: Is it okay if a manager yells at an</p> <p>25 employee during a business conversation?</p>	
<p>1 D. Berardo</p> <p>2 THE WITNESS: I mean, the -- the way</p> <p>3 I define harassment, I don't think anything</p> <p>4 would be okay, if -- if --</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: And you define it as...?</p> <p>7 A: I -- I define it as kind of</p> <p>8 nonbusiness -- nonbusiness-type behaviour of a</p> <p>9 sexual or nonsexual nature that -- that, you</p> <p>10 know, makes the other employee feel</p> <p>11 uncomfortable. I mean, again, this is just</p> <p>12 off the top of my head, so it's hard for me to</p> <p>13 come up with a full definition.</p> <p>14 Q: We'll take that definition. Was that</p> <p>15 ever okay at Absolute?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: If -- if someone was</p> <p>18 harassing someone for nonbusiness reasons,</p> <p>19 no, it was not okay.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: If they were harassing them for</p> <p>22 business reasons, was it okay?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: I guess I need to</p> <p>25 understand -- I mean, you're asking me</p>	<p>Page 82</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: I mean, in -- in my</p> <p>4 view, it's not a best practice.</p> <p>5 MR. THOMAS:</p> <p>6 Q: Is it -- at Absolute, was that okay?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Like, was that okay for a manager to</p> <p>10 do?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I mean, I -- I can't</p> <p>13 speak on behalf of the company. I mean,</p> <p>14 for myself --</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Well, I'm asking on behalf of HR for</p> <p>17 the company.</p> <p>18 A: Well, I said --</p> <p>19 Q: As an HR -- as an HR -- as head of</p> <p>20 HR, was it okay for managers to yell at</p> <p>21 employees about business things?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: It's -- it's not</p> <p>24 something that I would encourage.</p> <p>25 Absolutely not. Not a best practice.</p>	<p>Page 84</p>

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<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: I'm not asking whether it's a best</p> <p>4 practice. I'm asking if -- was it okay at</p> <p>5 Absolute for a manager to do that?</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: I would -- if I found</p> <p>8 out the manager was doing that, I would</p> <p>9 coach the manager on how to communicate a</p> <p>10 bit more effectively.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Which would mean not to do it?</p> <p>13 A: Which would mean --</p> <p>14 Q: Not to yell?</p> <p>15 A: -- not to do it, yes.</p> <p>16 Q: Okay. What about falsely accusing</p> <p>17 someone of stealing? Is that something a</p> <p>18 manager should do at Absolute?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: Falsely accusing</p> <p>21 someone of stealing. I mean, if -- if it</p> <p>22 was false, obviously, the manager shouldn't</p> <p>23 be telling an employee that they're</p> <p>24 stealing if they're not stealing. I</p> <p>25 mean...</p>	<p>Page 85</p> <p>1 D. Berardo</p> <p>2 A: -- that would not be okay for a</p> <p>3 manager to tell an employee that they're</p> <p>4 stealing when they're not stealing or when</p> <p>5 there's no evidence of stealing.</p> <p>6 Q: And you're saying that -- you said a</p> <p>7 few things, but you're talking about under</p> <p>8 Absolute policy; right? That wouldn't be</p> <p>9 acceptable?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: No, I'm not saying</p> <p>12 under Absolute policy, just because I don't</p> <p>13 have the policies in front of me. I -- I</p> <p>14 don't recall the policies.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Do you think it was -- was it your</p> <p>17 understanding that it was okay for people --</p> <p>18 for a manager to falsely accuse someone of</p> <p>19 stealing at Absolute under Absolute's policies?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: Again, I don't have the</p> <p>22 policies in front of me, so I don't recall</p> <p>23 specific policies about anything against</p> <p>24 managers specifically or in the policy</p> <p>25 for -- you know, anything in the policy</p>
<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: And that was not allowed at Absolute?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: Or was it allowed?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: Was it allowed at</p> <p>9 Absolute? I mean, are you --</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: Was -- let me rephrase the question.</p> <p>12 Was it or was it not allowed at Absolute for</p> <p>13 managers to falsely accuse their employees of</p> <p>14 stealing?</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: Again, I don't really</p> <p>17 understand the question. You're asking me</p> <p>18 if it was okay for a manager to tell an</p> <p>19 employee that he or she is stealing when</p> <p>20 they're not stealing. Is that what you're</p> <p>21 asking me?</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Correct.</p> <p>24 A: So I would say that --</p> <p>25 Q: Yes.</p>	<p>Page 86</p> <p>1 D. Berardo</p> <p>2 that would say that managers are not</p> <p>3 allowed to tell employees that they are</p> <p>4 stealing when they're not stealing. I</p> <p>5 don't know if the policy covered that</p> <p>6 specifically.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: It might have; it might not. Either</p> <p>9 way, it could have -- Absolute -- it could</p> <p>10 have been okay at Absolute for that to happen;</p> <p>11 right?</p> <p>12 A: I --</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: That's not what I said.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Okay. Sitting here right now, is it</p> <p>17 possible that under Absolute's policy, falsely</p> <p>18 accusing an employee of stealing was okay?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: I don't -- I can't</p> <p>21 answer that question because I don't have</p> <p>22 the policy in front of me, and I -- I don't</p> <p>23 have intimate knowledge with the policy</p> <p>24 right now.</p> <p>25 BY MR. THOMAS:</p>

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<p>1 D. Berardo</p> <p>2 Q: So it's possible --</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: -- that that was okay?</p> <p>6 A: I --</p> <p>7 Q: Because if it's not possible, the</p> <p>8 answer is, no, that wasn't allowed under</p> <p>9 Absolute policy. If you say you're not sure,</p> <p>10 it means maybe it's possible; maybe it isn't.</p> <p>11 Right?</p> <p>12 A: I mean, I'm just saying I just don't</p> <p>13 recall. I don't recall --</p> <p>14 Q: Okay.</p> <p>15 A: -- the policy. I'm sorry.</p> <p>16 Q: Maybe that sort of thing is what can</p> <p>17 happen at Absolute?</p> <p>18 MR. SULLIVAN: Is that a question?</p> <p>19 MR. THOMAS: Yeah.</p> <p>20 MR. SULLIVAN: Objection to the form</p> <p>21 of that question.</p> <p>22 THE WITNESS: Can you repeat the</p> <p>23 question, please.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: So maybe it was okay at Absolute for</p>	<p>Page 89</p> <p>1 D. Berardo</p> <p>2 before, I don't have --</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: So let me -- let me -- let me</p> <p>5 rephrase the question. As you sit here today,</p> <p>6 you can't foreclose the possibility that</p> <p>7 Absolute would allow managers to tell their</p> <p>8 employees that they -- tell their employees</p> <p>9 falsely that they were stealing stuff; right?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: I mean, based on the</p> <p>12 policy, I -- I just -- I don't have the</p> <p>13 information to say yes or no to that.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Based on what your knowledge is of</p> <p>16 Absolute, do you have the ability to say yes</p> <p>17 or no to that?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: Based on my knowledge</p> <p>20 of Absolute? So not the policy?</p> <p>21 BY MR. THOMAS:</p> <p>22 Q: As serving -- as serving there in --</p> <p>23 as head of HR for -- or the HR department for</p> <p>24 four-plus years.</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 91</p>
<p>1 D. Berardo</p> <p>2 managers to falsely accuse their employees of</p> <p>3 stealing? As you sit here today, that might</p> <p>4 have been okay?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: Well, I don't have the</p> <p>7 information in front of me about the</p> <p>8 policy, so I -- I can't answer whether it</p> <p>9 would be okay or not okay.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: But maybe?</p> <p>12 MR. SULLIVAN: I'm sorry. I didn't</p> <p>13 hear that. Can you --</p> <p>14 THE COURT REPORTER: But maybe.</p> <p>15 MR. SULLIVAN: Oh. Objection to</p> <p>16 form.</p> <p>17 I'm sorry. Was that a question again</p> <p>18 or a statement?</p> <p>19 MR. THOMAS: A question. Maybe,</p> <p>20 question mark.</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 MS. LESTRADE: Asked and answered.</p> <p>23 MR. SULLIVAN: And asked and answered</p> <p>24 multiple times.</p> <p>25 THE WITNESS: So as I have answered</p>	<p>Page 90</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: So I think I have</p> <p>3 answered the question before, that if -- do</p> <p>4 I think it's okay for a manager to say to</p> <p>5 an employee that he or she is stealing when</p> <p>6 they're not stealing. My opinion is</p> <p>7 that -- my opinion is that that would not</p> <p>8 be okay when I was the head of HR.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: And that would be -- and your</p> <p>11 understanding is that would be against policy</p> <p>12 when you were head of HR there; correct?</p> <p>13 A: No.</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: That is -- that's not</p> <p>16 my understanding. Because I -- I have</p> <p>17 already answered that I don't have</p> <p>18 knowledge of the policy off the top of my</p> <p>19 head, so I can't answer that question.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: What does -- what did Absolute policy</p> <p>22 require you in HR to do to remedy harassment</p> <p>23 of employees by their managers?</p> <p>24 A: I don't -- I -- I don't recall the</p> <p>25 specific policy.</p>	<p>Page 92</p>

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<p>1 D. Berardo</p> <p>2 Q: In general. Do they require you to</p> <p>3 do anything or not?</p> <p>4 A: In -- if someone was sexually -- if</p> <p>5 someone has -- had accused someone of sexually</p> <p>6 harassing? Is that what you're asking?</p> <p>7 Q: Or just harassment on any -- on any</p> <p>8 basis -- on any basis, based on their</p> <p>9 complaints of discrimination, based on gender.</p> <p>10 A: Sure.</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: Sure. If it -- if</p> <p>13 there was harassment based on gender or</p> <p>14 discrimination, we definitely would have to</p> <p>15 investigate.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: When you worked at Absolute, did you</p> <p>18 consider someone to be complaining about</p> <p>19 discrimination only if they specifically said</p> <p>20 they were being treated illegally under</p> <p>21 discrimination laws?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: Well, no. I -- someone</p> <p>24 could tell me -- you know, someone could</p> <p>25 tell me -- you know, if someone told me --</p>	<p>Page 93</p> <p>1 D. Berardo</p> <p>2 issue of discrimination with you?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: I -- I would -- I would</p> <p>5 talk to that employee to get a -- get some</p> <p>6 specifics on -- on what she may be speaking</p> <p>7 about.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: What happens if a female employee</p> <p>10 came to you and said that she just wants to be</p> <p>11 paid fairly? Would that -- would you consider</p> <p>12 that to be something that you needed to follow</p> <p>13 up on in terms of potential discrimination?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: I would definitely talk</p> <p>16 to her about specifics of -- of what she</p> <p>17 would be referring to so I could -- I could</p> <p>18 investigate further.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: What happens if a woman came to you</p> <p>21 and said that she wanted to -- when she said</p> <p>22 that a male employee was being paid full value</p> <p>23 and that she wanted to be paid full value too</p> <p>24 for her work?</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 95</p>
<p>1 D. Berardo</p> <p>2 I mean, someone doesn't have to say 'I was</p> <p>3 treated -- I was treated illegally based on</p> <p>4 protected grounds.' I mean, they would</p> <p>5 likely tell me the circumstances, and then</p> <p>6 we could determine if it was sexual</p> <p>7 harassment or -- or bullying or -- or</p> <p>8 something that they were being</p> <p>9 discriminated based on protected grounds.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: And it wouldn't be just statements --</p> <p>12 you wouldn't require them to make a statement</p> <p>13 to you like 'I'm being discriminated against</p> <p>14 on the basis of sex' before you would you</p> <p>15 consider it a --</p> <p>16 A: No.</p> <p>17 Q: -- complaint; correct?</p> <p>18 A: No. Absolutely. Someone wouldn't</p> <p>19 have to specifically say they were being</p> <p>20 discriminated on the basis of sex.</p> <p>21 Q: If somebody came to you and said --</p> <p>22 let's say a woman came to you and said 'all</p> <p>23 I'm asking -- all I'm asking is to be treated</p> <p>24 the same' in comparison with her male</p> <p>25 employees, would you -- would that raise an</p>	<p>Page 94</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Would that have raised a concern in</p> <p>4 your mind that you needed to look at potential</p> <p>5 discrimination?</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: Again, I -- I would --</p> <p>8 I would -- I -- I would talk to the</p> <p>9 employee to get -- to gather more</p> <p>10 information.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Why?</p> <p>13 A: Because I would understand -- want to</p> <p>14 understand why the employee -- why the</p> <p>15 employee is thinking that way, who is the --</p> <p>16 who the employee is comparing themselves to.</p> <p>17 We would need to look at, you know, probably a</p> <p>18 whole bunch of different factors on, you know,</p> <p>19 what job they're doing, what level they're</p> <p>20 working at, what their experience, their</p> <p>21 background, their education is.</p> <p>22 Q: And you would follow up on -- on</p> <p>23 comments like that?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: Yeah, if someone -- if</p>	<p>Page 96</p>

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<p>1 D. Berardo</p> <p>2 someone came to me and -- I would</p> <p>3 definitely be having that conversation with</p> <p>4 that person to -- to gather more</p> <p>5 information from that person.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: What happens if an employee came to</p> <p>8 you and said that she's worried about being</p> <p>9 retaliated -- it -- well, strike that.</p> <p>10 What happens if an employee came to</p> <p>11 you and said that she was worried that she</p> <p>12 doesn't want to be known as a 'troublemaker'?</p> <p>13 Would that raise concerns with you?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: Well, I mean, it</p> <p>16 would -- it would definitely set off some</p> <p>17 red flags in my -- in my mind. And I would</p> <p>18 -- I would ask some probing questions on --</p> <p>19 on why the employee felt that way.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: What happens if a female employee</p> <p>22 came to you and said that she's being treated</p> <p>23 differently than her male counterparts? What</p> <p>24 would you do?</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 97</p> <p>1 D. Berardo</p> <p>2 be suggesting discrimination; right?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: I mean, there's --</p> <p>5 yeah, employees could ask me a whole bunch</p> <p>6 of different questions that wouldn't raise</p> <p>7 red flags for me.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Well, most -- and most of the time,</p> <p>10 when employees ask you questions, you don't</p> <p>11 feel the need to ask more probing questions to</p> <p>12 find out if they're talking about</p> <p>13 discrimination. Is that fair to say?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: When you were at Absolute?</p> <p>17 A: No, that's not fair to say.</p> <p>18 Q: Do you say that most -- do you say</p> <p>19 that, most of the time employees ask you</p> <p>20 questions, you feel the need to probe more to</p> <p>21 see if there's discrimination going on?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: It -- it depends what</p> <p>24 kind of questions they've asked -- they</p> <p>25 asked me.</p>
<p>1 D. Berardo</p> <p>2 THE WITNESS: I would ask -- I -- I</p> <p>3 would ask, again, specific questions and</p> <p>4 follow up and get -- get some more</p> <p>5 specifics from that employee.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: These -- is it fair to say all these</p> <p>8 types of questions that we went over would be</p> <p>9 the types of questions that would raise red</p> <p>10 flags in your mind from a discrimination point</p> <p>11 of view in HR?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: It would cause me to</p> <p>14 ask some more questions to the employees</p> <p>15 for sure.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Because, potentially, the complaints</p> <p>18 are about discrimination; right?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: Potentially.</p> <p>21 BY MR. THOMAS:</p> <p>22 Q: There are other types of questions</p> <p>23 that employees would ask you that wouldn't</p> <p>24 raise any red flags, and you wouldn't need to</p> <p>25 follow up on; correct? Because they wouldn't</p>	<p>Page 98</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Okay. And, in fact, the questions we</p> <p>4 just went over would be the types of questions</p> <p>5 that would suggest potential discrimination to</p> <p>6 you; right?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: They would cause me to</p> <p>9 ask more questions, yes.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: Because of discrimination; right?</p> <p>12 A: Well, just because, in my head, I --</p> <p>13 I would want to understand if -- yeah, if</p> <p>14 there was some sort of discrimination or -- or</p> <p>15 harassment.</p> <p>16 Q: Now, you say that you would ask more</p> <p>17 probing questions. How would you -- what do</p> <p>18 you mean by that?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: I would ask some</p> <p>21 follow-up -- I mean, it depends on what</p> <p>22 they're telling me, but I would ask some</p> <p>23 follow-up questions, and I would ask for</p> <p>24 specifics so I -- so I could understand the</p> <p>25 situation.</p>

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<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Would you document what the employee</p> <p>4 told you?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: I -- I --</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: In response to -- in response to your</p> <p>9 questions?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: Yeah, I -- I would -- I</p> <p>12 mean, yeah, if -- if they were coming to me</p> <p>13 for -- for something that may be</p> <p>14 discriminatory, I would document it.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: And what sort of follow-up would you</p> <p>17 do after you documented their responses?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: So if there was --</p> <p>20 sorry, if there was discrimination, or if</p> <p>21 there was not discrimination?</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Well, once you asked the follow-up --</p> <p>24 what would you -- let me ask you this --</p> <p>25 A: Sure.</p>	<p>Page 101</p> <p>1 D. Berardo</p> <p>2 through that of -- of any -- with any sort of</p> <p>3 investigations that we may have to -- we may</p> <p>4 have to conduct.</p> <p>5 Q: Would you raise the issues with the</p> <p>6 people who were being accused of doing the</p> <p>7 discrimination?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: It's based on -- based</p> <p>10 on the -- it's -- it's based on -- I mean,</p> <p>11 it would be based on the circumstances,</p> <p>12 but, oftentimes, you do have to interview</p> <p>13 the witnesses, and -- and those that are</p> <p>14 being accused to come up with the -- with</p> <p>15 the answer.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Would you document those</p> <p>18 interactions?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: Yes, you would -- you</p> <p>21 would document those interactions.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Is there ever a time when, if an</p> <p>24 employee raised the sorts of questions I</p> <p>25 just -- well, let me -- let me go back through</p>
<p>1 D. Berardo</p> <p>2 Q: -- what would you do to further</p> <p>3 investigate whether there was discrimination</p> <p>4 based on what the employee said?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: You know, it would --</p> <p>7 it would depend on the -- it would depend</p> <p>8 on the circumstances. I mean, there could</p> <p>9 be thousands of situations, so it really</p> <p>10 would -- it really would depend.</p> <p>11 Oftentimes, we have to look at was there</p> <p>12 anyone else in the room, witnesses. I</p> <p>13 would -- you know, again, this is just</p> <p>14 me -- this is what I would do -- I'm just</p> <p>15 telling you what I would do right now. Not</p> <p>16 back then.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: I want -- I want to talk about what</p> <p>19 you would do -- what you would do when you</p> <p>20 were head of HR at Absolute.</p> <p>21 A: Sure. I mean, we would -- we would</p> <p>22 have to investigate any sort of</p> <p>23 discriminations, and we would, you know, do so</p> <p>24 by -- I would do so by, you know, raising it</p> <p>25 with our legal counsel to help guide us</p>	<p>Page 102</p> <p>1 D. Berardo</p> <p>2 that.</p> <p>3 Is there ever a time that an</p> <p>4 employee said something to you like 'all I ask</p> <p>5 for is to be treated the same --' if a female</p> <p>6 employee -- strike that.</p> <p>7 If a female employee said something</p> <p>8 like 'all I ask is to be treated the same'</p> <p>9 when comparing herself to male counterparts,</p> <p>10 is there ever a situation where you wouldn't</p> <p>11 follow up and ask questions of her about that?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: So if -- I mean --</p> <p>14 MR. THOMAS: What is -- what is the</p> <p>15 basis of the objection?</p> <p>16 MR. SULLIVAN: It's calling for a</p> <p>17 hypothetical.</p> <p>18 MR. THOMAS: No, I'm -- okay. Then</p> <p>19 let me make it clear.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: Under Absolute's policy and</p> <p>22 practices, as HR manager, would there ever be</p> <p>23 a time that you wouldn't follow up and ask a</p> <p>24 woman further questions when she says 'all I</p> <p>25 ask is to be treated the same' and comparing</p>

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<p>1 D. Berardo</p> <p>2 herself to male colleagues?</p> <p>3 A: So, again, I can't speak to the</p> <p>4 policy specifically, because I don't have it</p> <p>5 in front of me right now. I don't recall</p> <p>6 specifically what it said. But I will say</p> <p>7 that if someone was in my office at Absolute</p> <p>8 and she said what you just said, I would</p> <p>9 always -- I would always ask a follow-up</p> <p>10 question to her and -- and get more</p> <p>11 information.</p> <p>12 Q: Same for a female employee who says</p> <p>13 that she just wants to be paid fairly?</p> <p>14 A: I would ask her -- I would ask her</p> <p>15 more information.</p> <p>16 Q: Always?</p> <p>17 MR. SULLIVAN: Objection to form.</p> <p>18 THE WITNESS: Yeah, I would never</p> <p>19 shoo that person out of my office. I would</p> <p>20 always ask some more questions.</p> <p>21 BY MR. THOMAS:</p> <p>22 Q: Would you always ask under -- as --</p> <p>23 as 'H' -- as the head of HR, if a woman said</p> <p>24 that she wants to be paid full value for her</p> <p>25 work and says that male employees are being</p>	<p>Page 105</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: The circumstances</p> <p>3 surrounding your -- what is, essentially, a</p> <p>4 hypothetical. I don't follow them. I</p> <p>5 think it's -- I think they're vague and</p> <p>6 ambiguous. I'm not directing --</p> <p>7 MR. THOMAS: Okay.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Go ahead, Mr. Berardo.</p> <p>10 MR. SULLIVAN: -- him not to answer,</p> <p>11 but I -- I have asserted objection based on</p> <p>12 form.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Go ahead, Mr. Berardo. You would</p> <p>15 always ask -- correct? -- under those</p> <p>16 circumstances?</p> <p>17 A: Yes, I would always ask follow-up</p> <p>18 questions.</p> <p>19 Q: If a female employee said she didn't</p> <p>20 want to be known as a troublemaker when she</p> <p>21 was complaining about her treatment by her</p> <p>22 male manager, would you always ask follow-up</p> <p>23 questions for that?</p> <p>24 A: Yes, I --</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 107</p>
<p>1 D. Berardo</p> <p>2 paid full value but she isn't, would you</p> <p>3 always ask follow-up questions for that?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: Yeah, I would ask</p> <p>6 follow-up questions.</p> <p>7 MR. THOMAS: What is -- so what is</p> <p>8 the basis of the objection, Mark?</p> <p>9 MR. SULLIVAN: Hypothetical.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: I'm talking about -- well, let me --</p> <p>12 I'm not asking hypothetical. I'm talking</p> <p>13 about under your practices at -- as head of</p> <p>14 HR, would you always follow up with a woman</p> <p>15 who said -- that came to you and said 'I want</p> <p>16 to be paid full value for my work' and</p> <p>17 compared herself to a male employee who she</p> <p>18 said was being paid full value?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: Yes, I would have.</p> <p>21 MR. THOMAS: What is the objection,</p> <p>22 Mark?</p> <p>23 MR. SULLIVAN: Vague, ambiguous.</p> <p>24 MR. THOMAS: What is vague and</p> <p>25 ambiguous about it?</p>	<p>Page 106</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: Yes, I would ask</p> <p>3 follow-up questions.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: And you would always ask follow-up</p> <p>6 questions if a female employee told you that</p> <p>7 she was being treated differently than her</p> <p>8 male counterparts; correct?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: I would ask follow-up</p> <p>11 questions, yes.</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: And let me just ask you -- I have</p> <p>14 more to go here. Are you -- in terms of a</p> <p>15 lunch -- I -- I mean, I'm in a different time</p> <p>16 zone than you. So I'm -- I don't need a lunch</p> <p>17 break, but I don't know what you all are</p> <p>18 thinking. Do you want a -- do you need a</p> <p>19 lunch break? Do you want to take some time</p> <p>20 now? Or what is your thought?</p> <p>21 MR. SULLIVAN: How are you doing?</p> <p>22 THE WITNESS: I'm -- I'm good, if you</p> <p>23 are.</p> <p>24 MR. SULLIVAN: Yeah, we -- we can</p> <p>25 continue going. What -- I -- is --</p>	<p>Page 108</p>

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<p>1 D. Berardo</p> <p>2 MS. LESTRADE: Yeah.</p> <p>3 MR. SULLIVAN: -- everyone else good</p> <p>4 with that?</p> <p>5 MS. LESTRADE: Sure. We've got our</p> <p>6 lunches here.</p> <p>7 MR. SULLIVAN: Yeah.</p> <p>8 MR. THOMAS: Okay. Fine.</p> <p>9 MR. SULLIVAN: Let's ask the court</p> <p>10 reporter. You will need a lunch break.</p> <p>11 What -- can you go another half hour, or do</p> <p>12 you want to stop now?</p> <p>13 THE COURT REPORTER: Yeah,</p> <p>14 absolutely. Another half hour is fine.</p> <p>15 MR. SULLIVAN: All right. Why don't</p> <p>16 we go another half hour and see where we</p> <p>17 are then?</p> <p>18 MR. THOMAS: Okay.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Mr. Berardo, let me also say that,</p> <p>21 about today's deposition, if at any point you</p> <p>22 need a break, of course just let us know.</p> <p>23 We'll be glad to accommodate it. If I've got</p> <p>24 a question pending, I may just want to finish</p> <p>25 off the question and answer before, but we can</p>	Page 109	Page 111
<p>1 D. Berardo</p> <p>2 take a break.</p> <p>3 A: Sure. Thank you.</p> <p>4 MR. SULLIVAN: Do you need a break</p> <p>5 now, or are you --</p> <p>6 THE WITNESS: I'm good right now.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: And -- sorry, go ahead. And then</p> <p>9 also, too, if you're -- and I think we have</p> <p>10 been doing this so far, but if you have any</p> <p>11 problems understanding the question I'm asking</p> <p>12 you, will you be sure to let me know before</p> <p>13 you answer it?</p> <p>14 A: Yes. Yeah.</p> <p>15 Q: And -- and you -- also, too, if I ask</p> <p>16 you a question and it can be answered several</p> <p>17 different ways and you're not sure which way</p> <p>18 to answer it, just let me know that too before</p> <p>19 you answer, if that's okay.</p> <p>20 A: Sure, yeah.</p> <p>21 Q: Were you aware about Errol Olsen</p> <p>22 engaging in a nude swim when he was -- when he</p> <p>23 was at -- working at Absolute?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: So I -- I came on after</p>	Page 110	Page 112

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<p>1 D. Berardo</p> <p>2 Q: Okay. So when you came onboard, they</p> <p>3 shifted over your forwarding relationship to</p> <p>4 the guy who had swum naked in front of at</p> <p>5 least one employee, if not more, at a company</p> <p>6 event previously; correct?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: I -- I started</p> <p>9 reporting to Errol when I became the HR</p> <p>10 manager, correct.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Did you think it was weird at all</p> <p>13 that you were reporting to a person who --</p> <p>14 well, first of all, what -- what do you think</p> <p>15 of the CFO swimming naked in front of</p> <p>16 employees at a company event --</p> <p>17 MR. SULLIVAN: Objection --</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: -- from an HR perspective?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: So you're asking for my</p> <p>22 personal opinion?</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: No, your opinion as an HR -- I mean,</p> <p>25 as -- with your background in HR --</p>	<p>Page 113</p> <p>1 D. Berardo</p> <p>2 now? You know -- so, again, if you're</p> <p>3 asking for my personal opinion, I don't</p> <p>4 know the --</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: No, your -- your opinion as -- with</p> <p>7 your background in HR.</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Should HR be reporting in to the guy</p> <p>11 who engaged in absolutely inappropriate</p> <p>12 behaviour with other employees of a sexual</p> <p>13 nature?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: Well, there was --</p> <p>16 there was no other -- there was no other</p> <p>17 choice at that point on where to report in</p> <p>18 to, so under the circumstances --</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: So it was fine?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: Under the</p> <p>23 circumstances, that's who I reported in to.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: You could have reported in to the</p>	
<p>1 D. Berardo</p> <p>2 A: Sure.</p> <p>3 Q: -- and working at Absolute.</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: Sure. Obviously, it's</p> <p>6 inappropriate. Absolutely inappropriate.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: And was there any discipline taken in</p> <p>9 terms of Mr. Olsen?</p> <p>10 A: I wasn't --</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I wasn't at the company</p> <p>13 at that time. I -- I don't know.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Did it concern you at all that you</p> <p>16 were suddenly reporting in HR -- in to someone</p> <p>17 who had engaged in absolutely inappropriate</p> <p>18 behaviour?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: I don't recall -- I</p> <p>21 don't recall how I felt about it.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: How do you feel about it now?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: How do I feel about it</p>	<p>Page 114</p> <p>1 D. Berardo</p> <p>2 CEO.</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: As was done before; right?</p> <p>6 A: The CEO was part of that incident.</p> <p>7 Q: Oh, okay. So, yeah, I guess we have</p> <p>8 the CEO engaged in absolutely inappropriate</p> <p>9 behaviour; right?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: Those were -- that's --</p> <p>12 that was the gossip that I heard. Again, I</p> <p>13 wasn't at the company at that time.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: But assuming it to be true, that they</p> <p>16 were swimming naked in front of at least one</p> <p>17 employee at a company event -- the CEO did</p> <p>18 that; is that correct?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: Again, this was -- it's</p> <p>21 gossip. So I wasn't there. I -- I don't</p> <p>22 know for certain.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: Who was it, to your understanding,</p> <p>25 that engaged in a nude swim in front of</p>	<p>Page 116</p>

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<p>1 D. Berardo 2 employees? 3 MR. SULLIVAN: Objection to form. 4 THE WITNESS: I mean, the gossip that 5 I heard was the -- were -- was the -- were the CEO, the CFO, and 6 the COO. 7 BY MR. THOMAS: 8 Q: From an HR perspective, what -- what 9 does that make you feel about Absolute as the 10 company? 11 MR. SULLIVAN: Objection. 12 BY MR. THOMAS: 13 Q: That the CEO, CFO, and COO are 14 swimming naked in front of employees at a 15 company event? 16 MR. SULLIVAN: Objection to form. 17 THE WITNESS: As I mentioned before, 18 it -- I -- I would feel that that's 19 completely inappropriate. 20 BY MR. THOMAS: 21 Q: And what did you feel about working 22 in the HR role for a company that had the top 23 level management engaging in that behaviour? 24 MR. SULLIVAN: Objection to form. 25 THE WITNESS: Well, so me and my</p>	<p>Page 117</p> <p>1 D. Berardo 2 BY MR. THOMAS: 3 Q: When you started working at Absolute. 4 What did that symbolize for you about the 5 culture at Absolute? 6 MR. SULLIVAN: Objection to form. 7 THE WITNESS: Well, I think the 8 culture at Absolute, when I started, 9 definitely needed some -- it definitely 10 needed some work. And -- and -- and that's 11 why, you know, when our -- our founder CEO 12 resigned and we went on a search for a new 13 CEO, brought in some new sales 14 professionals, that's why I felt it was a 15 positive -- those were -- those were 16 positive developments. 17 BY MR. THOMAS: 18 Q: Why did -- why did the culture need 19 changing, from your HR perspective? 20 MR. SULLIVAN: Objection to form. 21 THE WITNESS: Typically, with founder 22 CEOs, you know, they -- they -- they hold 23 the company near and dear. They don't like 24 a lot of change. So I felt for the company 25 to take it to the next level, that it</p>
<p>1 D. Berardo 2 previous manager felt that we could add 3 some professional capabilities and 4 professional HR support to the company, so 5 we -- we felt that we could make a positive 6 impact. 7 BY MR. THOMAS: 8 Q: And so when you say there really 9 wasn't anyone -- there wasn't really any other 10 choice, the reason there wasn't any other 11 choice was because the entire top management 12 of the company, you understood, had engaged in 13 absolutely inappropriate behaviour, so you're 14 going to be stuck with one of them. Right? 15 MR. SULLIVAN: Objection to form. 16 THE WITNESS: So, I mean, from the 17 gossip that I heard -- again, I wasn't 18 there -- I mean, that was my opinion. I 19 mean... 20 BY MR. THOMAS: 21 Q: What does that symbolize to you about 22 the culture of Absolute? 23 MR. SULLIVAN: Objection to form. 24 THE WITNESS: The culture of Absolute 25 when?</p>	<p>Page 118</p> <p>1 D. Berardo 2 needed some outside help. 3 BY MR. THOMAS: 4 Q: Because...? 5 A: I mean, from a business perspective, 6 understanding the importance of HR. That's 7 just from my perspective. From a sales 8 perspective, from a product's perspective, I 9 think an outside person can provide a lot of 10 value. 11 Q: And one of the -- one of the bad 12 things about the culture at Absolute was the 13 top three people in the company would swim 14 naked at a company event in front of other 15 employees. That was the culture; correct? 16 MR. SULLIVAN: Objection to form. 17 THE WITNESS: I wouldn't define 18 the -- 19 BY MR. THOMAS: 20 Q: That needed help? 21 A: No, I -- I -- I wouldn't define the 22 culture as -- from that specific incident. 23 Q: Isn't that typical of the way that -- 24 it was -- it was acceptable for that to happen 25 at Absolute; right?</p>

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<p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: I wasn't there at the</p> <p>4 time, so I can't say if it was acceptable</p> <p>5 or not acceptable.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Well, let's talk about Errol Olsen</p> <p>8 who was one of the three people. Where is he</p> <p>9 today?</p> <p>10 A: My understanding is that he's still</p> <p>11 at Absolute.</p> <p>12 Q: M'mm-hmm. What -- what position had</p> <p>13 he held when you were looking for a new CEO?</p> <p>14 A: He was interim CEO.</p> <p>15 Q: M'mm-hmm. Was that a good -- a good</p> <p>16 way to have the -- the culture of the company,</p> <p>17 from your HR perspective?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: I mean, from my</p> <p>20 perspective, Errol -- Errol was a very --</p> <p>21 he was a highly engaged leader that really</p> <p>22 cared about people. That was my --</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: Are you referring to the nude swim as</p> <p>25 being highly engaged and very caring about</p>	Page 121	Page 123
<p>1 D. Berardo</p> <p>2 people?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: Doing -- doing that in front of other</p> <p>6 employees, that's very caring?</p> <p>7 A: No, that's -- that's not what I</p> <p>8 was --</p> <p>9 Q: It's --</p> <p>10 A: -- referring to.</p> <p>11 Q: -- certainly very engaged. I would</p> <p>12 agree with you there.</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: That's not what I was</p> <p>15 referring to.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Okay. Well, would that be an example</p> <p>18 of him being highly engaged, jumping in a pool</p> <p>19 naked in front of other employees?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: That would not be an</p> <p>22 example of that, no.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: Okay. Would that be an example of</p> <p>25 him -- well, why -- well, why don't you -- I</p>	Page 122	Page 124

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<p>1 D. Berardo      2 wasn't at the meeting.      3 MR. THOMAS: Okay. All right. If      4 the court reporter can get Exhibit 38 for      5 the witness, Kenny 38. We can go on or off      6 the record. It does not matter to me.      7 THE COURT REPORTER: It's fine.      8 BY MR. THOMAS:      9 Q: All right. Once you have the      10 document, I would like you to return -- I      11 would like you to turn to response to      12 interrogatory 15, which is on page 17.      13 A: Number 15, sorry?      14 Q: Yeah. Actually, I mean, before we      15 even go to that, I mean, would you -- would      16 you have expected in HR that you should have      17 been informed of the comments that Thomas      18 Kenny made?      19 MR. SULLIVAN: Objection to form.      20 THE WITNESS: If someone had taken      21 offence to them, I would -- I would have      22 appreciated someone coming to talk to me      23 about it.      24 BY MR. THOMAS:      25 Q: What about even if someone hadn't</p>	Page 125	<p>1 D. Berardo      2 could get Exhibits 36 and 37, Kenny 36 and      3 Kenny 37 for the witness.      4 BY MR. THOMAS:      5 Q: What I would ask you --      6 A: This is 38.      7 Q: -- to do, Mr. Berardo, is read over      8 Exhibit 36 and 37, and then I'm going to ask      9 you some questions about them.      10 A: Sure.      11 This is 37.      12 THE COURT REPORTER: Yeah, and then      13 what is the next one?      14 THE WITNESS: This is 38.      15 BY MR. THOMAS:      16 Q: And I believe if we go in      17 chronological order -- you can take a look --      18 but I think Exhibit 37 -- oh, I'm sorry.      19 Wait, no. Actually, this is -- yeah, 36 takes      20 place chronologically before Exhibit 37,      21 but --      22 MR. SULLIVAN: Nelson, the court      23 reporter has not yet located Exhibit 36.      24 MR. THOMAS: Okay. All right.      25 Thank you.</p>	Page 127
<p>1 D. Berardo      2 taken offence to them, just the fact that they      3 were being put out there as the hiring      4 criteria for Absolute. Is it something you      5 would have liked to have been told about?      6 MR. SULLIVAN: Objection to form.      7 THE WITNESS: I don't think that it      8 was -- I mean, my opinion is that it was      9 not being put out as a hiring criteria.      10 BY MR. THOMAS:      11 Q: Or, I mean, was it -- were there --      12 well, did -- well, let me ask you this: Did      13 you understand that Mr. Kenny said that      14 this -- that he was referring to the type of      15 people that Geoff Haydon wanted to have hired      16 in the company?      17 MR. SULLIVAN: Objection to form.      18 THE WITNESS: Is there -- sorry, can      19 I -- can I look at the quote again?      20 Because -- is there --      21 BY MR. THOMAS:      22 Q: All right. We'll -- yeah, we'll --      23 we can go there. Hang on here.      24 A: Sure.      25 MR. THOMAS: If the court reporter</p>	Page 126	<p>1 D. Berardo      2 THE COURT REPORTER: Can we actually      3 go off the record?      4 VIDEOGRAPHER: Going off record. The      5 time is 1:45.      6 (PROCEEDINGS RECESSED AT 1:45 P.M.)      7 (PROCEEDINGS RECONVENED AT 2:44 P.M.)      8 VIDEOGRAPHER: We're back on the      9 record. The time is 2:44.      10 BY MR. THOMAS:      11 Q: All right. Hey. Thank you very      12 much.      13 Mr. Berardo, we'll go over those      14 exhibits in just a second.      15 A: Sure.      16 Q: Before I do that, one follow-up      17 question I had for you was you -- when we were      18 talking about the nude swim that the COO, CEO,      19 and CFO participated in, you said you think      20 there was one other -- one other employee      21 present -- or at least one other employee that      22 you thought might be present. Who was that?      23 MR. THOMAS: Objection to form.      24 THE WITNESS: So, sorry, I -- I don't      25 know. I -- I wasn't there. I didn't read</p>	Page 128

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<p>1 D. Berardo</p> <p>2 any reports. Just pure gossip and</p> <p>3 speculation.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: Yeah, sure.</p> <p>6 A: So I don't know.</p> <p>7 Q: I will take your gossip and</p> <p>8 speculation.</p> <p>9 A: Oh, I don't -- I don't -- wouldn't</p> <p>10 know who that employee was. I was just</p> <p>11 speculating that there would be at least one</p> <p>12 employee there, if there was -- you know, it</p> <p>13 turned out to be an issue.</p> <p>14 Q: Were you aware that an employee</p> <p>15 posted a Facebook page about it?</p> <p>16 A: I was not, no.</p> <p>17 Q: Okay. All right. So have you had a</p> <p>18 chance to look at Exhibits 36 and 37?</p> <p>19 A: I have not, no.</p> <p>20 Q: Okay. Why don't you go ahead and</p> <p>21 take a look.</p> <p>22 A: Sure. Okay.</p> <p>23 Q: So I guess the first question I have</p> <p>24 for you is, turning to Exhibit 36, page</p> <p>25 DEF9807, did you understand that the comment</p>	<p>Page 129</p> <p>1 D. Berardo</p> <p>2 opinion?</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: No, I'm asking for -- all my</p> <p>5 questions today will be you with your HR</p> <p>6 background.</p> <p>7 A: So if someone -- yeah, so if -- if</p> <p>8 someone said to me 'the CEO does not want to</p> <p>9 hire,' that would refer to hiring some -- you</p> <p>10 know, what he does -- who he does and doesn't</p> <p>11 want to hire, sure.</p> <p>12 Q: Okay. Now, I think you're also</p> <p>13 saying that what was said was -- was not --</p> <p>14 did not accurately reflect the company's</p> <p>15 hiring criteria; right?</p> <p>16 A: This -- this does not reflect the</p> <p>17 company's hiring criteria, no.</p> <p>18 Q: Would you have expected employees to</p> <p>19 tell you about statements like this that were</p> <p>20 made at company events?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: Yeah, I mean, if</p> <p>23 they -- if they -- if they took offence to</p> <p>24 it or --</p> <p>25 BY MR. THOMAS:</p>	<p>Page 131</p>
<p>1 D. Berardo</p> <p>2 at issue was 'the CEO does not want to hire</p> <p>3 people who are at the end of their rainbow; he</p> <p>4 just wants to hire guys who are athletes, talk</p> <p>5 trash, and are aggressive'?</p> <p>6 A: Yeah, I believe that, just from my</p> <p>7 recollection, that was the quote that you --</p> <p>8 that you had provided to us that -- that</p> <p>9 Thomas allegedly said.</p> <p>10 Q: Do you consider that to be referring</p> <p>11 to hiring criteria?</p> <p>12 A: Absolutely not.</p> <p>13 Q: When it says 'the CEO does not want</p> <p>14 to hire,' you don't think that's hiring</p> <p>15 criteria?</p> <p>16 A: I -- I -- recruiting and hiring to me</p> <p>17 meant at no time did -- did -- did this ever</p> <p>18 get sent to us to hire, you know...</p> <p>19 Q: I'm not asking that. I'm asking you,</p> <p>20 though, the statement 'the CEO does not want</p> <p>21 to hire blank, blank, blank,' that is a</p> <p>22 reference, whether true or not, to hiring</p> <p>23 criteria; correct?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: So you're asking for my</p>	<p>Page 130</p> <p>1 D. Berardo</p> <p>2 Q: Even if -- even if they didn't take</p> <p>3 offence.</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: 'The CEO does not want</p> <p>6 to hire people who are at the end of their</p> <p>7 rainbow. He just wants to hire guys who</p> <p>8 are athletes, talk trash, and are</p> <p>9 aggressive.' I mean, as the head of HR, I</p> <p>10 would have liked if someone would have, you</p> <p>11 know, brought this to my attention, if --</p> <p>12 if -- if it was said.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: And no one brought it your</p> <p>15 attention -- correct? -- until this lawsuit?</p> <p>16 A: That's correct.</p> <p>17 Q: Now, is it true that Thomas Kenny did</p> <p>18 not deny that he made these statements?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: So just referring back</p> <p>21 to the email, so I said Thomas does not --</p> <p>22 does not deny that he said these comments,</p> <p>23 but he said that they were taken out of</p> <p>24 context. So -- so that's -- you know,</p> <p>25 that's a fact that is in the -- that is in</p>	<p>Page 132</p>

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<p>1 D. Berardo</p> <p>2 the exhibit.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: And that's a fact that you recorded;</p> <p>5 right?</p> <p>6 A: That's correct.</p> <p>7 Q: And that you accurately recorded?</p> <p>8 A: I -- I would presume I accurately --</p> <p>9 I accurately recorded this, yes.</p> <p>10 Q: Did Thomas ever deny to you that he</p> <p>11 made these comments?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: From what I recall,</p> <p>14 he -- I mean, when I had the conversation</p> <p>15 with him, I don't think he ever admitted</p> <p>16 that he said -- he said the -- you know, he</p> <p>17 said it exactly as quoted. You know, so I</p> <p>18 don't -- I don't recall if --</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: What did he -- what did he say he</p> <p>21 said?</p> <p>22 A: I don't -- I don't recall -- what I</p> <p>23 recall is kind of in the email and how he --</p> <p>24 how he would have explained that, if he had</p> <p>25 said -- if he had said 'end of the rainbow,'</p>	<p>Page 133</p> <p>1 D. Berardo</p> <p>2 A: Right.</p> <p>3 Q: And he said to you he was referring</p> <p>4 to the environment where Geoff came from, not</p> <p>5 a specific quote from Geoff.</p> <p>6 A: Okay.</p> <p>7 Q: Right? Is that what he told you?</p> <p>8 A: I would presume so, if it's -- if</p> <p>9 it's on here. I would have recorded this</p> <p>10 accurately.</p> <p>11 Q: And you also would have recorded</p> <p>12 accurately his statement to you Geoff never</p> <p>13 said the statement to TK?</p> <p>14 A: If that's what he said and I wrote</p> <p>15 down, that would be accurate.</p> <p>16 Q: Well, I'm asking you -- well, let's</p> <p>17 go -- let's -- let's go through -- let's start</p> <p>18 with Exhibit 36.</p> <p>19 A: Sure.</p> <p>20 Q: Anything that you have written in 36</p> <p>21 that is not accurate?</p> <p>22 A: Again, I -- I can only presume five</p> <p>23 years ago or four years ago, whenever I wrote</p> <p>24 this down, that I would -- I would only have</p> <p>25 written down accurate -- accurate things. So</p>
<p>1 D. Berardo</p> <p>2 what he was referring to -- you know, says he</p> <p>3 was referring to those that are 'coasting in</p> <p>4 their careers and just collecting a</p> <p>5 paycheque.'</p> <p>6 Q: Was that him denying the comment was</p> <p>7 made?</p> <p>8 A: I don't think that was him denying</p> <p>9 the comment was made, no.</p> <p>10 Q: Did he ever deny to you that the</p> <p>11 comment was made?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: I don't -- I don't -- I</p> <p>14 don't recall him ever admitting that the --</p> <p>15 that the comment was made exactly how it</p> <p>16 was laid out.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: My question to you is did he ever</p> <p>19 deny making the comment?</p> <p>20 A: I -- I don't remember. I don't</p> <p>21 recall if he ever denied it or not.</p> <p>22 Q: And, in fact, if you turn to</p> <p>23 Exhibit 37, you asked him three main</p> <p>24 questions. 'Where does this statement come</p> <p>25 from?'</p>	<p>Page 134</p> <p>1 D. Berardo</p> <p>2 everything in here --</p> <p>3 Q: I'm asking you -- so -- so is there</p> <p>4 any -- do you have any reason to believe that</p> <p>5 any statement of yours in Exhibit Kenny 36 is</p> <p>6 inaccurate?</p> <p>7 A: No, I have no reason to believe that.</p> <p>8 Q: Turning to Exhibit 37, do you have</p> <p>9 any reason to believe that any statement that</p> <p>10 you wrote in Exhibit 37 is inaccurate?</p> <p>11 A: No.</p> <p>12 Q: Do you remember anything in</p> <p>13 Exhibit 36 from those conversations that you</p> <p>14 relate that you left out?</p> <p>15 A: Not that I recall.</p> <p>16 Q: Any --</p> <p>17 A: I --</p> <p>18 Q: -- statements that related to the</p> <p>19 conversations you had in Exhibit 37 that you</p> <p>20 left out?</p> <p>21 A: No. I mean, I -- I can't recall the</p> <p>22 actual conversation in my mind.</p> <p>23 Q: So is there anything you can remember</p> <p>24 leaving out in Exhibit 37?</p> <p>25 A: No. I don't recall the conversation,</p>

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<p>1 D. Berardo</p> <p>2 so -- I -- I don't recall the conversation.</p> <p>3 So, therefore, you know, it's hard for me to</p> <p>4 answer that question, if I left anything out,</p> <p>5 because I don't recall the conversation.</p> <p>6 Q: In Exhibit 38 and 37, you were</p> <p>7 sending the information to your in-house</p> <p>8 lawyer, Oliver de Geest, and your outside</p> <p>9 lawyer, Aaron Goldstein. Correct?</p> <p>10 A: Yes.</p> <p>11 Q: Would you have had every incentive to</p> <p>12 be accurate and complete in what you wrote up</p> <p>13 to them?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: Well, I would -- I</p> <p>16 would have only told them -- I would have</p> <p>17 only told them the truth. Absolutely.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: And would there be any reason that</p> <p>20 you would have left out any important</p> <p>21 information to them from these conversations?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: Not -- not that I</p> <p>24 recall. I don't recall the conversation,</p> <p>25 so it's hard -- it's hard --</p>	<p>Page 137</p> <p>1 D. Berardo</p> <p>2 A: I do see that, yes.</p> <p>3 Q: And they did interpret it in a</p> <p>4 negative way; is that correct?</p> <p>5 A: Yes, I do see that.</p> <p>6 Q: Did it concern you, as head of HR,</p> <p>7 that the two women you interviewed viewed the</p> <p>8 comment in a negative way?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: So, I mean, I can't</p> <p>11 remember how I -- I felt when I spoke with</p> <p>12 them. I will say, as the head of HR, yeah,</p> <p>13 it would concern me.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: And did it concern you that they</p> <p>16 thought that they -- they 'know how TK is' --</p> <p>17 MR. SULLIVAN: Objection to form.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: -- in terms of him making comments</p> <p>20 like that?</p> <p>21 A: I can't say that was in reference to</p> <p>22 him making comments like that. I'm not sure</p> <p>23 what that -- what that was reference -- what</p> <p>24 -- what that exactly was referencing.</p> <p>25 Q: And, now, you said you would have</p>	
<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: My question is -- my question to you</p> <p>4 is different. My question to you is is there</p> <p>5 any reason you would have not been complete in</p> <p>6 describing the conversation that you occur --</p> <p>7 that occurred with Mr. Kenny --</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: -- on any important point?</p> <p>11 A: Nothing that I can think of.</p> <p>12 Q: Now, on page 36, you said that you</p> <p>13 spoke to seven people from the meeting. Do</p> <p>14 you see that?</p> <p>15 A: Oh, Exhibit 36?</p> <p>16 Q: Yeah.</p> <p>17 A: Yeah, I do.</p> <p>18 Q: Who were those seven people?</p> <p>19 A: I don't -- I don't recall their</p> <p>20 names.</p> <p>21 Q: Two women who were present recalled</p> <p>22 the statement. Do you see that?</p> <p>23 A: I do see that, yes.</p> <p>24 Q: And brushed it off. They 'know how</p> <p>25 TK is.' Do you see that?</p>	<p>Page 138</p> <p>1 D. Berardo</p> <p>2 expected someone at Absolute who was bothered</p> <p>3 by the comment to -- that you would have</p> <p>4 expected to have heard about it; correct?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: At the time.</p> <p>8 A: I would have -- I would have expected</p> <p>9 it -- I would have -- I mean, I would -- I</p> <p>10 would have liked someone to raise it, if -- if</p> <p>11 they felt offended by it, yes.</p> <p>12 Q: And these people did interpret it in</p> <p>13 a negative way, didn't they?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: Yeah. From that</p> <p>16 statement, yes.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: And they didn't feel comfortable</p> <p>19 raising it with you, did they?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: So I -- I can't</p> <p>22 interpret how they felt.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: No, my question to you is they did</p> <p>25 not -- well, I -- they never raised it --</p>	<p>Page 140</p>

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<p>1 D. Berardo</p> <p>2 strike that.</p> <p>3 They never raised it with you, did</p> <p>4 they?</p> <p>5 A: They did not raise it, correct.</p> <p>6 Q: Let's go back to Exhibit 67.</p> <p>7 A: 67?</p> <p>8 Q: And if you would go to page</p> <p>9 DEFS1411 -- and, actually, no, I'm sorry.</p> <p>10 Well, let's look at that. On DEFS -- I'm</p> <p>11 sorry. Yeah, let's look at DEFS1411, the</p> <p>12 middle of that second bullet where it talks</p> <p>13 about the lack of female representation,</p> <p>14 diversity of the company, the fact that women</p> <p>15 are paid less and can't advance their careers.</p> <p>16 And then go to the comment on page</p> <p>17 DEFS1395 where the respondent said:</p> <p>18 The current leadership of Todd Awtry</p> <p>19 and Thomas Kenny is not receptive to any</p> <p>20 kind of feedback.'</p> <p>21 And DEFS1397, the second bullet below</p> <p>22 'comments,' which says:</p> <p>23 Staff are afraid to truly speak about</p> <p>24 management. Not encouraged. If you speak</p> <p>25 up, you will lose your job.'</p>	<p>Page 141</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: So, you know, what I</p> <p>4 would say is that I don't know how they</p> <p>5 felt or why they didn't bring it up, but I</p> <p>6 think it would be speculation to say that</p> <p>7 they didn't bring it up because they felt</p> <p>8 uncomfortable.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Do you know any other reason why they</p> <p>11 wouldn't bring it up to HR?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: It could be because</p> <p>14 they just brushed it off as -- as no big</p> <p>15 deal.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Typical Thomas Kenny, the way he is?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: I don't know. I would</p> <p>20 -- I would be speculating. It would be</p> <p>21 best to speak to these witnesses.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: I don't think -- I don't think you</p> <p>24 would be speculating about that, because they</p> <p>25 told you they knew that's how -- they brushed</p>
<p>1 D. Berardo</p> <p>2 So compare those comments from the survey back</p> <p>3 in 2014 with the culture in 2015 that felt</p> <p>4 uncomfortable when comments are made about</p> <p>5 hiring criteria and raising them with HR. How</p> <p>6 much had changed?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: Well, I mean, you're --</p> <p>9 you're picking one comment out of, you</p> <p>10 know...</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: I picked three.</p> <p>13 A: Well, three comments. It could be</p> <p>14 the same person out of 300-plus people. So I</p> <p>15 don't think that one comment would --</p> <p>16 Q: So three comments.</p> <p>17 A: Sure -- those three comments is</p> <p>18 representative of the culture of -- of</p> <p>19 Absolute or the culture of speaking up.</p> <p>20 Q: Well, it's representative in 2015</p> <p>21 that two women who thought these comments were</p> <p>22 negative towards them and typical of Thomas</p> <p>23 Kenny didn't feel comfortable mentioning that</p> <p>24 to you. Correct? You had to find out through</p> <p>25 a lawsuit?</p>	<p>Page 142</p> <p>1 D. Berardo</p> <p>2 it off because they knew that's how Thomas</p> <p>3 Kenny was.</p> <p>4 A: But --</p> <p>5 MR. SULLIVAN: Objection to form. Is</p> <p>6 that a question?</p> <p>7 MR. THOMAS: Yeah.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: I don't think you're speculating, are</p> <p>10 you? Because that's what they told you?</p> <p>11 A: As I --</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: As I mentioned before,</p> <p>14 they 'know how TK is,' I -- I don't have</p> <p>15 any context or remember any context on why</p> <p>16 they said that or what they meant by that.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: Did any red flags go off with you</p> <p>19 when you found out that two female employees</p> <p>20 felt that they were receiving negative</p> <p>21 comments from their -- the executive vice</p> <p>22 president of sales, and they didn't feel</p> <p>23 comfortable coming to you? And you knew there</p> <p>24 was people in the past had said that they</p> <p>25 weren't comfortable raising issues about</p>

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<p>1 D. Berardo</p> <p>2 Thomas Kenny? Did any red flags go off in</p> <p>3 your head at this --</p> <p>4 MS. LEWIS: That's too vague.</p> <p>5 MR. THOMAS:</p> <p>6 Q: -- point?</p> <p>7 A: So --</p> <p>8 MR. THOMAS: Objection to form.</p> <p>9 THE WITNESS: So I don't know --</p> <p>10 you're saying that they didn't feel</p> <p>11 comfortable coming to me, and I think</p> <p>12 that's a misrepresentation of the facts.</p> <p>13 Unless they said that --</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Well, they didn't come to you. Did</p> <p>16 it raise a red flag to you that they didn't</p> <p>17 come to you and people had reported being</p> <p>18 uncomfortable about raising issues about</p> <p>19 Thomas Kenny?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: Well, I spoke with them</p> <p>22 about it, and they felt comfortable</p> <p>23 speaking with me when I spoke to them about</p> <p>24 it.</p> <p>25 BY MR. THOMAS:</p>	<p>Page 145</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Why did they tell you they brushed it</p> <p>4 off?</p> <p>5 A: I don't recall.</p> <p>6 Q: Why don't -- what did -- what did you</p> <p>7 say in your email that -- of why they brushed</p> <p>8 it off?</p> <p>9 A: Well, it -- it says there they 'know</p> <p>10 how TK is.'</p> <p>11 Q: M'mm-hmm. What do you -- red flags</p> <p>12 didn't go off in your head when two females</p> <p>13 tell you that they brushed off negative sexual</p> <p>14 discriminatory comments from their manager</p> <p>15 because they knew that's how he is?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: We were -- we were</p> <p>18 investigating this comment, so it was a bit</p> <p>19 too late for red flags to go off in my</p> <p>20 head, because we were already investigating</p> <p>21 the comment.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Well, there -- well, what about -- do</p> <p>24 you mean it's too -- it's too late to -- what</p> <p>25 do you mean by it's too late?</p>
<p>1 D. Berardo</p> <p>2 Q: So this didn't raise any red flags to</p> <p>3 you, then?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: I mean, it -- when</p> <p>6 would it have raised red flags? After the</p> <p>7 fact -- after when I spoke with them?</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: I'm just asking you if it did or</p> <p>10 didn't. During the conversation, after the</p> <p>11 conversation, at any point --</p> <p>12 A: It --</p> <p>13 Q: -- did it raise any red flags with</p> <p>14 you?</p> <p>15 A: It didn't. Because from -- from --</p> <p>16 what I recall of the conversation is that</p> <p>17 they -- they didn't -- you know, again, they</p> <p>18 -- they -- they brushed it off. They didn't</p> <p>19 view it as discriminatory.</p> <p>20 Q: Well, why did they brush it off</p> <p>21 again? I -- we keep coming back to that. Why</p> <p>22 did they brush it off?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: I don't know. I don't</p> <p>25 -- I don't recall.</p>	<p>Page 146</p> <p>1 D. Berardo</p> <p>2 A: Well, I was already speaking with</p> <p>3 them, so when a red flag usually goes off in</p> <p>4 my head is if -- is if we're just finding out</p> <p>5 about something for the first time.</p> <p>6 Q: Aren't you just finding out about</p> <p>7 something for the first time here?</p> <p>8 A: Well, we were finding out -- we -- we</p> <p>9 knew that Thomas had allegedly said something,</p> <p>10 and we were investigating the comment. We</p> <p>11 talked to seven employees, according to the</p> <p>12 email, and three of the employees remember the</p> <p>13 comment. So --</p> <p>14 Q: My question to you is, yes or no, red</p> <p>15 flags went off in your head or didn't go off</p> <p>16 in your head when these women reported this to</p> <p>17 you?</p> <p>18 A: I --</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: I don't recall if red</p> <p>21 flags went off in my head.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Did you do any follow-up</p> <p>24 investigation on what they said?</p> <p>25 MR. SULLIVAN: Objection to form.</p>

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<p>1 D. Berardo</p> <p>2 THE WITNESS: So from what I recall,</p> <p>3 this was -- this was the investigation, and</p> <p>4 I don't recall -- I don't recall what was</p> <p>5 done after this.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Were Thomas Kenny's comments</p> <p>8 acceptable --</p> <p>9 MR. SULLIVAN: Objection --</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: -- under Absolute's HR policy and</p> <p>12 hiring criteria?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: I don't have the policy</p> <p>15 in front of me, so I can't speak to the</p> <p>16 policy. I think --</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: Does that help -- let me ask you</p> <p>19 this: Did -- is what Thomas Kenny said</p> <p>20 appropriate [lost connection] hiring criteria?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: So if we're taking -- I</p> <p>23 mean, if we're taking his quotes as what he</p> <p>24 actually said, I -- you know, I would say</p> <p>25 it's -- it's not -- and -- and if you're</p>	Page 149	Page 151
<p>1 D. Berardo</p> <p>2 interpreting it like you -- like you...</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: I'm not interpreting it. I'm just</p> <p>5 asking. I -- thank you for your answer.</p> <p>6 What did you do to Thomas Kenny for</p> <p>7 making these comments?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: We -- we investigated</p> <p>10 the comments. From what I recall, the</p> <p>11 company determined that there was nothing</p> <p>12 further to investigate.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: And what sort of disciplinary action</p> <p>15 was taken against an executive vice president</p> <p>16 who made inappropriate hiring comments which,</p> <p>17 in turn, made women feel in a negative way?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: I don't -- I don't</p> <p>20 recall -- I don't recall what was done.</p> <p>21 BY MR. THOMAS:</p> <p>22 Q: You don't recall taking any action</p> <p>23 against Thomas Kenny, do you?</p> <p>24 A: Well, I -- I don't recall what action</p> <p>25 was taken. I'm -- I'm sure --</p>	Page 150	Page 152

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<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Well, I think you said just doing the</p> <p>4 investigation was action enough.</p> <p>5 A: No -- no, I --</p> <p>6 Q: [Indiscernible] --</p> <p>7 A: -- didn't -- I didn't say that. I</p> <p>8 didn't say it's --</p> <p>9 Q: Okay.</p> <p>10 A: -- action enough.</p> <p>11 Q: But doing an investigation was part</p> <p>12 of the company's action against him; correct?</p> <p>13 A: Well, it's -- it's part of -- I mean,</p> <p>14 it's part of -- when someone makes a</p> <p>15 complaint, an investigation is -- is -- is an</p> <p>16 action you take towards finding out the facts</p> <p>17 and the truth and coming up with a resolution.</p> <p>18 Q: What were the facts and the truth</p> <p>19 here?</p> <p>20 A: What were the facts and the truth</p> <p>21 here?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: I mean, the -- the</p> <p>24 facts were that Mary had alleged that this</p> <p>25 comment was made, and -- and we -- we</p>	<p>Page 153</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: I'm asking you now.</p> <p>4 A: So he was alleged to have made those</p> <p>5 comments. He --</p> <p>6 Q: Did he -- did he make -- did he make</p> <p>7 them?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: So he didn't deny the</p> <p>10 comments. I don't -- I don't recall if</p> <p>11 he -- I mean, I -- I don't recall what he</p> <p>12 said.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Well, you weren't there, but what --</p> <p>15 you can look at your emails. What was he</p> <p>16 alleged to have said?</p> <p>17 A: Well, he was -- he was alleged to</p> <p>18 have said what -- what Mary -- what you had</p> <p>19 brought forward during our negotiations.</p> <p>20 Q: And did you come to -- what</p> <p>21 conclusion did you come to as to whether he</p> <p>22 made those comments?</p> <p>23 A: So I'm not sure if we ever came to a</p> <p>24 conclusion if he or if he didn't make those</p> <p>25 exact comments.</p>
<p>1 D. Berardo</p> <p>2 investigated what he meant by each of these</p> <p>3 comments -- or each of his comments, and it</p> <p>4 was determined that -- it was determined</p> <p>5 that -- that -- that the intent of the</p> <p>6 comments were not -- were not based on any</p> <p>7 sort of discrimination.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Where was that determination</p> <p>10 recorded?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I mean, I -- I don't</p> <p>13 recall. I mean, part of it is here on --</p> <p>14 MR. THOMAS: Okay. We request the</p> <p>15 production of any documents reflecting any</p> <p>16 determination, any action, anything</p> <p>17 involving Tom Kenny and the company's</p> <p>18 investigation.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Let me ask you -- you said it was</p> <p>21 determined. The truth -- the truth was that</p> <p>22 he did make those comments; correct?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: That's not what I said.</p> <p>25 He was alleged --</p>	<p>Page 154</p> <p>1 D. Berardo</p> <p>2 Q: Okay.</p> <p>3 A: I don't recall.</p> <p>4 Q: But, Mr. Berardo, you're telling me</p> <p>5 under oath that as an HR official and -- and</p> <p>6 you have an executive vice president for sales</p> <p>7 who tells a room of sales employees 'the CEO</p> <p>8 does not want to hire people who are at the</p> <p>9 end of their rainbow; he just wants to hire</p> <p>10 guys who are athletes, talk trash, and are</p> <p>11 aggressive.' You're telling me that you never</p> <p>12 came to a conclusion as to whether he said</p> <p>13 that or not?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: I -- I don't -- I don't</p> <p>16 recall -- I don't recall the specific notes</p> <p>17 from the -- with our conversations with the</p> <p>18 witnesses there. I mean, I wasn't -- I</p> <p>19 wasn't there.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: That's not my question. Do you</p> <p>22 remember what my question was, Mr. Berardo?</p> <p>23 A: No. Go ahead. Repeat it.</p> <p>24 Q: Okay. My question to you is -- well,</p> <p>25 actually, I will have the court reporter read</p>

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<p>1 D. Berardo</p> <p>2 it back.</p> <p>3 A: Sure.</p> <p>4 (REPORTER READ BACK)</p> <p>5 THE WITNESS: I -- I don't recall if</p> <p>6 we came to a conclusion or not.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: You should have -- you should have,</p> <p>9 though, one way or the other; right?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: I don't know if we</p> <p>12 should have or shouldn't have. I just know</p> <p>13 that -- I don't recall -- I don't recall</p> <p>14 the conversations around if it was</p> <p>15 determined whether he said that or not.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Well, if you're supposed to come to</p> <p>18 the truth of an allegation, how can you do</p> <p>19 that if you don't determine whether the person</p> <p>20 said what was supposed -- what they said was</p> <p>21 said?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: Well, I think it came</p> <p>24 down to -- I mean, his words could be</p> <p>25 interpreted different ways by different</p>	<p>Page 157</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: Is this a professional HR way to</p> <p>5 approach hiring decisions and communications</p> <p>6 with employees?</p> <p>7 A: So --</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: So I don't think this</p> <p>10 was a way to -- this was never -- he was</p> <p>11 never directed to hire people. I can</p> <p>12 attest to that --</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Well, what were the first three --</p> <p>15 what are the first three words of the comment?</p> <p>16 Or the first five words?</p> <p>17 A: So the first five --</p> <p>18 Q: 'The CEO does not want to hire.'</p> <p>19 A: So that's what --</p> <p>20 Q: That's what you're saying doesn't</p> <p>21 relate to hiring decisions?</p> <p>22 A: So that's what alleged -- that's what</p> <p>23 alleged -- yeah, that's the alleged quote.</p> <p>24 Q: Alleged quote is the one that he does</p> <p>25 not deny making; right?</p>	
<p>1 D. Berardo</p> <p>2 people. So it's -- sometimes it's very</p> <p>3 difficult to come to the absolute truth.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: So you -- you found that -- you found</p> <p>6 his statement here and his non-denial that he</p> <p>7 made them difficult to decide what to do?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: So from what I recall,</p> <p>10 it -- it -- it wasn't -- it -- it wasn't</p> <p>11 clear. It wasn't black and white. It</p> <p>12 was -- you know, he explained what he meant</p> <p>13 by -- by what he said. And it was</p> <p>14 interpreted differently -- it was</p> <p>15 interpreted differently.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Is this an example of Mr. Kenny's</p> <p>18 professionalism -- professionalism that you</p> <p>19 thought so highly of?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: Is this an example of</p> <p>22 his professionalism? I mean, you're asking</p> <p>23 for my opinion?</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: As an HR person, yes.</p>	<p>Page 158</p> <p>1 D. Berardo</p> <p>2 A: It says that Thomas did not deny he</p> <p>3 -- that he said these comments, but they were</p> <p>4 taken out of context, yes.</p> <p>5 Q: Okay. So he doesn't deny that he</p> <p>6 said the CEO does not want to hire people who</p> <p>7 are at the end of their rainbow; he just wants</p> <p>8 to hire guys who are athletes, talk trash, and</p> <p>9 are aggressive. Is this an example of a</p> <p>10 professional, buttoned-down comment by Thomas</p> <p>11 Kenny?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: I mean, no.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Did it -- did it surprise you that he</p> <p>16 would make such a comment?</p> <p>17 MR. SULLIVAN: Objection to form.</p> <p>18 THE WITNESS: So it -- did it</p> <p>19 surprise -- yeah, I mean, from what I</p> <p>20 recall, I was a bit surprised that he</p> <p>21 said -- that it was alleged that he said</p> <p>22 this.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: And that he didn't deny that he said</p> <p>25 it?</p>	<p>Page 160</p>

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<p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: You keep saying 'alleged.' He 'allegedly' said it. Do you think we can drop 'allegedly' at this point because he doesn't deny that he said it?</p> <p>5 MS. LESTRADE: No.</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: Or do you still want to say 'alleged'?</p> <p>9 A: Well, from -- from what I recall, I mean, the -- the quote is very specific, and he wasn't sure -- he wasn't sure exactly what he said. So I would hate for it to be the truth -- I would hate for it to be brought forward as the absolute truth, because, from what I recall, you know, he didn't -- he didn't -- he didn't remember it exactly like it was -- like it was said. He just didn't deny that --</p> <p>10 Q: You don't --</p> <p>11 A: -- something like --</p> <p>12 Q: Yeah, you -- you don't --</p>	<p>Page 161</p> <p>1 D. Berardo</p> <p>2 Q: Okay. And who were the two female employees you talked to?</p> <p>3 A: So I don't know for -- I don't know for certain. I -- I believe one was Myra.</p> <p>4 Q: Myra Moy-Gregory?</p> <p>5 A: Yes.</p> <p>6 Q: And the second? Amy Rathbun?</p> <p>7 A: Amy Rathbun, yes.</p> <p>8 Q: Do you think they were being honest with you?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: I -- I don't know -- I don't -- I can't answer what -- what they -- if they were being honest or if they were not being honest. I mean, I would assume -- I would think that they would be honest with me, yes.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Now, is it indicative of Absolute culture that the executive vice president for sales can say 'the CEO does not want to hire people who are at the end of their rainbow; he just wants to hire guys who are athletes, talk trash, and are aggressive,' and suffer no</p>
<p>1 D. Berardo</p> <p>2 A: -- that was said.</p> <p>3 Q: -- mention that in either Exhibit 36 or 37 that he doesn't remember it exactly, do you?</p> <p>4 A: Sorry?</p> <p>5 Q: You don't mention anywhere in Exhibit 36 or 37 that he doesn't remember it exactly, do you?</p> <p>6 A: I don't know. A lot of this is redacted, so --</p> <p>7 Q: No, no, I'm asking you in -- anywhere in 36 or 37 --</p> <p>8 A: Oh, sure.</p> <p>9 Q: -- did he -- did you say that he didn't remember it exactly?</p> <p>10 A: No, I don't think -- not -- not in -- not in what I'm looking at right now, I did not say that.</p> <p>11 Q: And -- and, in fact, the female employees said they know how he is; right?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: They know how TK is, yes. That's what's down here.</p> <p>14 BY MR. THOMAS:</p>	<p>Page 162</p> <p>1 D. Berardo</p> <p>2 repercussions for doing so?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: Again, I -- I don't know if he suffered any repercussions --</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: If he didn't suffer any, that -- it's okay at Absolute?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: If he -- if he didn't -- sorry, if he didn't?</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Are you aware of any -- are you aware of any negative consequences he suffered?</p> <p>11 A: I mean, I -- I don't recall. I mean, Thomas was --</p> <p>12 Q: Okay. Is that -- is that --</p> <p>13 A: Thomas was --</p> <p>14 Q: -- acceptable, under Absolute culture, to make comments like this and no one have any record of any negative repercussion to him whatsoever?</p> <p>15 MR. SULLIVAN: Wait a minute.</p> <p>16 Will you -- will you finish your prior answer.</p>

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<p>1 D. Berardo</p> <p>2 THE WITNESS: Can you read back what</p> <p>3 I was...</p> <p>4 (REPORTER READ BACK)</p> <p>5 THE WITNESS: I mean, I was going to</p> <p>6 say Thomas was eventually terminated from</p> <p>7 Absolute.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: How long after this?</p> <p>10 A: I -- I think it was after I left.</p> <p>11 Q: So we're talking a year?</p> <p>12 A: So, no, I left at the end of -- I</p> <p>13 left at the end of 2016. So this was six</p> <p>14 months -- I don't remember if Thomas was</p> <p>15 terminated before or after. I'm sure we can</p> <p>16 get that to you.</p> <p>17 Q: Yeah, we -- we have that information.</p> <p>18 A: Sure.</p> <p>19 Q: But setting aside -- we have the</p> <p>20 reason for his termination. Leaving -- I will</p> <p>21 just represent to you they're not because of</p> <p>22 this.</p> <p>23 Is there any -- is it indicative of</p> <p>24 the culture at Absolute that a person can make</p> <p>25 a comment like Thomas Kenny did and suffer no</p>	<p>Page 165</p> <p>1 D. Berardo</p> <p>2 MS. LESTRADE: -- answered.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: -- and suffer no negative</p> <p>5 repercussions? Would that be indicative of</p> <p>6 how you all ran things?</p> <p>7 A: I think --</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: -- I already answered</p> <p>10 that question.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Which is, yes, that it --</p> <p>13 MR. SULLIVAN: Objection to --</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: -- could be indicative?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: No, I don't think</p> <p>18 that's what I said.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: I said regardless of his intentions.</p> <p>21 Let's assume his intentions were fine.</p> <p>22 A: His intentions were fine --</p> <p>23 Q: It's fine for someone to say this if</p> <p>24 they have good intentions, and nothing happens</p> <p>25 to them at Absolute? That's the kind of</p>
<p>1 D. Berardo</p> <p>2 repercussions?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: If the -- if the</p> <p>5 comment -- if the comment was found to be</p> <p>6 discriminatory, I would say that it would</p> <p>7 not be indicative of the culture. But we</p> <p>8 -- we investigated, and it was determined</p> <p>9 that the -- his intentions were not to be</p> <p>10 discriminatory.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: And because he didn't have that</p> <p>13 intention, he suffered no repercussions for</p> <p>14 what he said?</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: Again, I don't -- I</p> <p>17 don't recall if there were any</p> <p>18 repercussions or not.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: I'm asking you would it be indicative</p> <p>21 of Absolute culture that a person could say</p> <p>22 this, regardless of --</p> <p>23 MS. LESTRADE: Asked and --</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: -- their intentions --</p>	<p>Page 166</p> <p>1 D. Berardo</p> <p>2 culture you all have?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: That's not the type of</p> <p>5 culture we have.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: But that's what happened here.</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: I think that comments</p> <p>10 can be interpreted in a number of different</p> <p>11 ways to a number of different people.</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: And some are acceptable?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: I mean, that's --</p> <p>16 that's -- that would be someone's opinion,</p> <p>17 if they're acceptable or not.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: Well, let me ask you this: As an HR</p> <p>20 person, is this an acceptable comment for an</p> <p>21 executive vice president of sales to make,</p> <p>22 regardless of their intention?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: I think that there</p> <p>25 would -- there would be some coaching after</p>

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<p>1 D. Berardo  2 for sure. If -- if it wasn't -- if it  3 was -- there is -- there's better ways to  4 say it, yes.  5 BY MR. THOMAS:  6 Q: So, no, it's not acceptable; correct?  7 MR. SULLIVAN: Objection to form.  8 THE WITNESS: It's not for me to  9 determine whether it's acceptable or not.  10 BY MR. THOMAS:  11 Q: You're -- but, I mean, you're head of  12 HR.  13 A: Well --  14 Q: What do you mean it's not up to you  15 to determine whether a discriminatory comment  16 is acceptable or not?  17 A: So --  18 MR. SULLIVAN: Objection to form.  19 THE WITNESS: So, again, we're -- we  20 -- we determined --  21 BY MR. THOMAS:  22 Q: Wait, wait, wait. I want to get back  23 to that. It's not your job? It's not your  24 job to determine whether this -- a  25 discriminatory comment is acceptable or not?</p>	Page 169	Page 171
<p>1 D. Berardo  2 A: That --  3 Q: You really -- do you stand by that?  4 A: No, that's not what I said. You're  5 --  6 Q: Well, let's read back your answer.  7 A: You're now --  8 MR. THOMAS: Court reporter, can you  9 read back his answer --  10 THE WITNESS: You're --  11 MR. THOMAS: -- about what he said  12 about it being his job.  13 THE WITNESS: Can you also read back  14 his question, though, so it's not taken out  15 of context.  16 MR. THOMAS: Absolutely. Please read  17 the question and answer back.  18 (REPORTER READ BACK)  19 THE WITNESS: So what I meant --  20 BY MR. THOMAS:  21 Q: It's not -- it's not for you to  22 determine whether a comment like this is  23 acceptable or not?  24 A: So if I -- so --  25 MR. SULLIVAN: Objection to form.</p>	Page 170	Page 172

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<p>1 D. Berardo</p> <p>2 there's -- there's different</p> <p>3 interpretations of the way different people</p> <p>4 say things. Or different -- different --</p> <p>5 people say things, and they can be</p> <p>6 interpreted differently, right, by</p> <p>7 different people.</p> <p>8 So we found that the way -- his</p> <p>9 intent was not discriminatory. And so</p> <p>10 could he have said it better? I already</p> <p>11 said yes. I don't know how to answer if it</p> <p>12 was acceptable or not and -- and in what</p> <p>13 context.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Why is it not -- why is it not</p> <p>16 discriminatory to say that you want to hire</p> <p>17 guys who are athletes, talk trash, and get in</p> <p>18 each other's faces? Why is that not</p> <p>19 discriminatory?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: Because we determined</p> <p>22 that what he meant -- what he was referring</p> <p>23 to were -- by 'guys' -- I mean, it says</p> <p>24 here by 'guys,' that's just the way he</p> <p>25 referenced all people, 'guys.' 'Hey, you</p>	<p>Page 173</p> <p>1 D. Berardo</p> <p>2 know, I can't remember what they meant by</p> <p>3 -- when they said they interpreted it in a</p> <p>4 negative way. Negative doesn't --</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: What weight did you -- what weight</p> <p>7 did you give to their concerns?</p> <p>8 MR. SULLIVAN: Were you finished with</p> <p>9 your answer?</p> <p>10 THE WITNESS: I was saying negative</p> <p>11 --</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: Were you -- yeah, were you finished?</p> <p>14 Did you have anything else?</p> <p>15 A: Yeah, I was going to say 'negative'</p> <p>16 doesn't necessarily mean 'discriminatory.'</p> <p>17 Q: Okay. What weight did you give to</p> <p>18 their comments?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: We -- we would have</p> <p>21 given -- we would have given their -- their</p> <p>22 comments equal weight. Absolutely.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: Somehow, though, the man ends up not</p> <p>25 getting punished; correct?</p>	<p>Page 175</p>
<p>1 D. Berardo</p> <p>2 guys.' He says it in a generic term, like</p> <p>3 many people do. At no time did he ever</p> <p>4 mean men.</p> <p>5 So -- so when we looked -- when we</p> <p>6 looked and we asked him -- you know, again,</p> <p>7 we didn't find his intent to be</p> <p>8 discriminatory.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: However, you did find two women who</p> <p>11 the comment -- they interpreted it in a</p> <p>12 negative way?</p> <p>13 A: Sure, yes.</p> <p>14 Q: Right? So on one -- on one hand, you</p> <p>15 have two women who interpreted it in a</p> <p>16 negative way; on the other hand, you have an</p> <p>17 inappropriate comment, but you take the man's</p> <p>18 word that he didn't mean it in a</p> <p>19 discriminatory way. Is that how -- is that</p> <p>20 how it shook out?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: No, because there --</p> <p>23 there -- there was context, and there was</p> <p>24 discussions with these two women. And</p> <p>25 sitting here today, I can't remember -- you</p>	<p>Page 174</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: Because it was</p> <p>4 determined that his comments were not</p> <p>5 discriminatory.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: And one of the people that made that</p> <p>8 determination was Errol Olsen; correct?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: I don't -- I don't</p> <p>11 recall who -- who all was involved with the</p> <p>12 determination.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Well, why don't you turn to page</p> <p>15 DEFS09807, where you say:</p> <p>16 Hi, Aaron. Our CFO spoke to Thomas</p> <p>17 Kenny last week.'</p> <p>18 Who was your CFO?</p> <p>19 A: Our CFO was Errol Olsen.</p> <p>20 Q: So the guy who swam nude in front of</p> <p>21 employees at the -- at the gathering to whom</p> <p>22 HR reported is the one who is involved in this</p> <p>23 investigation; correct?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 BY MR. THOMAS:</p>	<p>Page 176</p>

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<p>1 D. Berardo</p> <p>2 Q: Just so I'm clear.</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: Errol was involved with</p> <p>5 the investigation.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Right? And I -- just to be clear,</p> <p>8 he's the one who swam nude in front of other</p> <p>9 employees at an employee event; correct?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: I wasn't there. I</p> <p>12 don't know. Again, it was gossip.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: And then, somehow, the man's word</p> <p>15 gets believed; right?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: What -- what man's word</p> <p>18 gets believed?</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: That would be Mr. Kenny's.</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: It was -- yeah, it was</p> <p>23 -- well, it was determined that -- that</p> <p>24 his -- you know, that his statement was not</p> <p>25 discriminatory.</p>	<p>Page 177</p> <p>1 D. Berardo</p> <p>2 Q: Okay. Do you feel that you were</p> <p>3 doing more in this situation than a mall cop,</p> <p>4 whose job was to observe and report?</p> <p>5 MR. SULLIVAN: Don't answer that.</p> <p>6 That's an insulting question. Don't answer</p> <p>7 that question.</p> <p>8 Move on.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Did you do anything -- did you do</p> <p>11 anything more in this case besides observe and</p> <p>12 report?</p> <p>13 A: Clearly. We investigated.</p> <p>14 Q: You observed and you reported, but</p> <p>15 you didn't take any action, did you?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: I don't recall which</p> <p>18 action we took. We had a -- we made a</p> <p>19 determination, which is action.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: And the action and determination was</p> <p>22 there was nothing -- there was nothing wrong</p> <p>23 here?</p> <p>24 A: There was no discrimination that</p> <p>25 was -- that was intended here, correct.</p>
<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: What a shock.</p> <p>4 MR. SULLIVAN: Is that a question?</p> <p>5 MR. THOMAS: No, just a statement.</p> <p>6 MR. SULLIVAN: Or a speech?</p> <p>7 MR. THOMAS: Actually, I don't think</p> <p>8 it was long enough for a speech, but</p> <p>9 whatever you -- whatever you want to call</p> <p>10 it is fine with me.</p> <p>11 MR. SULLIVAN: We'll call it a</p> <p>12 speech.</p> <p>13 MR. THOMAS: It was a part -- maybe a</p> <p>14 part of the closing statement.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Have you ever heard about -- did you</p> <p>17 ever hear about the movie 'Mall Cops'?</p> <p>18 A: 'Mall Cops'?</p> <p>19 Q: Yes.</p> <p>20 A: I think so, yeah.</p> <p>21 Q: Do you remember the -- the joke in</p> <p>22 there was that mall cops -- all that mall cops</p> <p>23 do is observe and report?</p> <p>24 A: I -- I don't -- I don't recall that,</p> <p>25 no.</p>	<p>Page 178</p> <p>1 D. Berardo</p> <p>2 Q: Did you attend the 2015 executive</p> <p>3 managers' meeting in Whistler?</p> <p>4 A: I -- I attended. I did attend an</p> <p>5 executive leadership team meeting in Whistler.</p> <p>6 I don't recall if it was 2015. It must have</p> <p>7 been.</p> <p>8 Q: Sorry, what was that?</p> <p>9 A: I said it must have been. I did</p> <p>10 attend an executive leadership team meeting in</p> <p>11 Whistler.</p> <p>12 Q: Do you remember any women being</p> <p>13 present there?</p> <p>14 A: I don't recall, no.</p> <p>15 Q: What was discussed in that meeting?</p> <p>16 A: It was a -- it was a lot of strategy.</p> <p>17 I mean, I --</p> <p>18 Q: Discussions about who were going to</p> <p>19 be retained, who were going to be let go?</p> <p>20 A: No. No. It was -- I -- from -- from</p> <p>21 -- from my recollection, it -- it wasn't that</p> <p>22 type of meeting. It was about the strategy of</p> <p>23 the company.</p> <p>24 Q: Was it about the reorganization?</p> <p>25 A: I don't remember if -- if we</p>

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<p>1 D. Berardo</p> <p>2 discussed any -- any reorganization. I don't</p> <p>3 recall.</p> <p>4 Q: Let me ask you did Amy Rathbun ever</p> <p>5 complain to you about her treatment at the</p> <p>6 company?</p> <p>7 A: Never.</p> <p>8 Q: And you wouldn't consider her</p> <p>9 comments to you on Exhibit 36 an example of</p> <p>10 complaining about that; right?</p> <p>11 A: I don't -- I don't remember our</p> <p>12 conversation specifically, so I can't even</p> <p>13 answer that question.</p> <p>14 Q: But she was one of the ones you</p> <p>15 interviewed; right?</p> <p>16 A: That's -- that -- from my</p> <p>17 recollection, yes.</p> <p>18 Q: And she interpreted Tom Kenny's</p> <p>19 comments in a negative way; right?</p> <p>20 A: That's what it says here, yes.</p> <p>21 Q: And that she knows that's how Tom</p> <p>22 Kenny is; right?</p> <p>23 A: They know how TK is. That's what it</p> <p>24 says, yes.</p> <p>25 Q: And you -- and you don't consider</p>	<p>Page 181</p> <p>1 D. Berardo</p> <p>2 at Absolute resulted in none of those people</p> <p>3 telling you what Thomas Kenny said about the</p> <p>4 hiring criteria at Absolute; correct?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: That's not correct.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: Did -- did any of them come to you</p> <p>9 and tell you --</p> <p>10 MR. SULLIVAN: Objection --</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: -- without you asking them first?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: No one told me about</p> <p>15 those comments.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Okay. And that's consistent with how</p> <p>18 things happened at Absolute, isn't it?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: That's incorrect.</p> <p>21 BY MR. THOMAS:</p> <p>22 Q: It's inconsistent?</p> <p>23 A: No, I said your statement is</p> <p>24 incorrect.</p> <p>25 Q: Okay. Why is it incorrect?</p>	<p>Page 183</p>
<p>1 D. Berardo</p> <p>2 that her complaining about being -- feeling</p> <p>3 discriminated against?</p> <p>4 A: I don't recall our conversation, our</p> <p>5 specific conversation. I -- I know Amy and I</p> <p>6 had a lot of conversations, and -- and never</p> <p>7 once did it come up that she ever felt or</p> <p>8 interpreted comments as discriminatory.</p> <p>9 Q: Let's go now to Exhibit 38 and the</p> <p>10 answer to interrogatory 15, which is on</p> <p>11 page 17. If you go to the last sentence, it</p> <p>12 talks about who was at the meeting when Thomas</p> <p>13 Kenny made his comments. Do you see that?</p> <p>14 A: What page are we looking at? Sorry.</p> <p>15 Q: Page 17.</p> <p>16 A: Oh, 15 here?</p> <p>17 MS. LESTRADE: Yeah.</p> <p>18 THE WITNESS: Number 15?</p> <p>19 MR. SULLIVAN: Yes.</p> <p>20 THE WITNESS: Okay.</p> <p>21 MR. SULLIVAN: I think the question</p> <p>22 is on the prior page.</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: All right. The culture that exists</p>	<p>Page 182</p> <p>1 D. Berardo</p> <p>2 A: Because you're -- you're making the</p> <p>3 assumption that no one would come or raise</p> <p>4 issues at Absolute, and that was the culture.</p> <p>5 Q: No one came or raised issues about</p> <p>6 Thomas Kenny's comment, did they? None of</p> <p>7 those people?</p> <p>8 A: About his comment, no.</p> <p>9 Q: That's the kind of culture that</p> <p>10 existed at Absolute, isn't it?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: It -- that is -- I -- I</p> <p>13 don't agree with what you're saying.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Why is -- why is -- why is that</p> <p>16 not -- is it consistent with the culture at</p> <p>17 Absolute or not consistent?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: We have -- there --</p> <p>20 there was numerous times where people have</p> <p>21 come to raise concerns about various</p> <p>22 different issues, so it's not indicative of</p> <p>23 the culture.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: So this was a -- this was surprising,</p>	<p>Page 184</p>

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<p>1 D. Berardo</p> <p>2 that people didn't come to you about this?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: I don't -- I don't</p> <p>5 remember my feelings.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Sitting here today, are you surprised</p> <p>8 that people did not come to you about it?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: Given the culture at Absolute at the</p> <p>12 time?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: Do I find it</p> <p>15 surprising? I -- I think -- I think I</p> <p>16 mentioned before I would have liked -- you</p> <p>17 know, I would have appreciated if someone</p> <p>18 would have raised it to me.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: My question to you is is it</p> <p>21 consistent with Absolute culture that no one</p> <p>22 came forward?</p> <p>23 A: I think I --</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: I've already answered</p>	<p>Page 185</p> <p>1 D. Berardo</p> <p>2 this is -- my -- my memory may be failing me,</p> <p>3 so I -- I want to make sure I say that. But I</p> <p>4 think it was -- they didn't come directly to</p> <p>5 me, but -- but they -- but it was -- it was</p> <p>6 Matt Meanchoff. He raised it to someone. It</p> <p>7 could have been -- it was someone in finance,</p> <p>8 perhaps. It could have been Errol; it could</p> <p>9 have been Lee. I'm not sure. About Mary and</p> <p>10 her team booking business in a certain way,</p> <p>11 booking it as new business versus renewal</p> <p>12 business.</p> <p>13 Q: Did you participate in the</p> <p>14 investigation of the DOE issue?</p> <p>15 A: Limitedly.</p> <p>16 Q: What -- tell -- describe your role.</p> <p>17 A: So from -- from what I recall, I had</p> <p>18 sat on -- I sat -- sat on an interview or two,</p> <p>19 but it was largely a -- it was largely a</p> <p>20 number. So they were -- they were trying to</p> <p>21 find out -- trying to find out how these</p> <p>22 numbers got booked into where. So it was</p> <p>23 largely, I think, run by finance. Perhaps</p> <p>24 legal. I don't recall specifically.</p> <p>25 Q: Who -- who do -- what interviews do</p>
<p>1 D. Berardo</p> <p>2 that question numerous times.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: And your answer is that it's</p> <p>5 inconsistent; correct?</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: The -- no one -- no one</p> <p>8 coming to me was inconsistent with what the</p> <p>9 culture generally was at Absolute.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: Were you aware at that Whistler --</p> <p>12 that Whistler meeting about employees that</p> <p>13 Absolute wanted to retain and intend to stay</p> <p>14 on?</p> <p>15 A: I don't -- I don't recall the</p> <p>16 conversation, off the top of my head.</p> <p>17 Q: Do you remember a point in time where</p> <p>18 Ms. Piehler was investigated regarding the</p> <p>19 Department of Education, the DOE?</p> <p>20 A: Yeah.</p> <p>21 Q: Tell me what you remember about that.</p> <p>22 A: That someone had raised concerns</p> <p>23 that -- that --</p> <p>24 Q: Who was that -- who was that someone?</p> <p>25 A: So I think, originally -- and -- and</p>	<p>Page 186</p> <p>1 D. Berardo</p> <p>2 you remember sitting in on?</p> <p>3 A: I don't -- I don't recall off the top</p> <p>4 of my head.</p> <p>5 Q: Were you aware that regional</p> <p>6 directors are generally not responsible for</p> <p>7 recording orders on sales in their region?</p> <p>8 A: They would ultimately be responsible</p> <p>9 because they have people reporting in to them,</p> <p>10 so they do have the ultimate responsibility.</p> <p>11 Q: But they're -- but you understand</p> <p>12 they're not the ones responsible for entering</p> <p>13 the sales or the orders; correct?</p> <p>14 A: Well, the -- the data entry? They</p> <p>15 wouldn't -- I -- to my knowledge, they</p> <p>16 wouldn't be, actually, data-inputting the</p> <p>17 numbers into the system. That wouldn't be</p> <p>18 their --</p> <p>19 Q: Or deciding where they should go;</p> <p>20 correct?</p> <p>21 A: No, ultimately -- so -- ultimately, I</p> <p>22 believe that's their responsibility. That's</p> <p>23 just my understanding of it. I -- I -- I was</p> <p>24 not in sales ops, and I didn't really have</p> <p>25 visibility into how business was booked,</p>

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<p>1 D. Berardo</p> <p>2 specifically. But -- but the regional --</p> <p>3 regional directors would -- would ultimately</p> <p>4 be responsible for the team that they have</p> <p>5 under them.</p> <p>6 Q: Did you know that Absolute</p> <p>7 investigated Mary Piehler and her subordinate,</p> <p>8 Charles Springgay, in relation to the issue of</p> <p>9 the DOE?</p> <p>10 A: Yes.</p> <p>11 Q: And what is the race of Charles</p> <p>12 Springgay?</p> <p>13 A: I mean, I don't know the specific</p> <p>14 race. He is -- he --</p> <p>15 Q: African American?</p> <p>16 A: No. Charles Springgay would be --</p> <p>17 would be of Asian decent, perhaps.</p> <p>18 Q: Do you know or not know?</p> <p>19 A: I mean, I -- I'm -- I would only</p> <p>20 visually -- be visually observing. So I don't</p> <p>21 know for certain what his background was.</p> <p>22 Q: Fair to say that he's a racial</p> <p>23 minority?</p> <p>24 A: It depends how you define racial</p> <p>25 minority. In --</p>	<p>Page 189</p> <p>1 D. Berardo</p> <p>2 A: I don't recall.</p> <p>3 Q: Why weren't Mike Kenny's commissions</p> <p>4 held on his DOE orders?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: But Mary Piehler's were; correct?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: I -- I don't recall the</p> <p>11 specifics on -- on -- on that.</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: Do you remember the time Mary</p> <p>14 Piehler's commissions were withheld?</p> <p>15 A: If you're asking me to answer with</p> <p>16 certainty, I can't answer with certainty. I</p> <p>17 don't remember.</p> <p>18 Q: What is your recollection right now?</p> <p>19 A: My recollection from -- from -- from</p> <p>20 what I remember is that there was a number of</p> <p>21 people who had their commission withheld</p> <p>22 during the investigation. I --</p> <p>23 Q: Who were -- who were they?</p> <p>24 A: Well, so -- so under investigation, I</p> <p>25 think it was Charles, Mary, and I think it was</p>
<p>1 D. Berardo</p> <p>2 Q: As an HR person.</p> <p>3 A: In Vancouver -- in Vancouver, he</p> <p>4 would not be considered a racial minority.</p> <p>5 Q: In the United States, would he be</p> <p>6 considered a racial minority?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: I believe so.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Now, Mary Piehler and Charles</p> <p>11 Springgay were investigated, but Mike Kenny -</p> <p>12 Mike Kenny and his subordinate, Justin</p> <p>13 Peacock, weren't investigated as part of this;</p> <p>14 correct?</p> <p>15 A: I don't --</p> <p>16 Q: DOE.</p> <p>17 A: I don't recall. I -- I don't know</p> <p>18 the specifics. Or recall the specifics.</p> <p>19 Q: Do you have any reason to believe</p> <p>20 that Mike Kenny was investigated?</p> <p>21 A: I don't even know if he was -- he was</p> <p>22 employed at that time. I don't know. I don't</p> <p>23 -- I don't recall.</p> <p>24 Q: Do you have any reason to believe he</p> <p>25 was investigated?</p>	<p>Page 190</p> <p>1 D. Berardo</p> <p>2 Justin Peacock. Those were kind of --</p> <p>3 Q: But not Ian Dunton, and not Mike</p> <p>4 Kenny; correct?</p> <p>5 A: I don't remember. Perhaps. I -- I</p> <p>6 don't know.</p> <p>7 Q: Did you approve of not paying Mary</p> <p>8 her commissions for the DOE order -- for the</p> <p>9 DOE orders, even though the investigation had</p> <p>10 not been completed?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: Did I approve us --</p> <p>13 Hyperwallet not paying -- sorry, did I</p> <p>14 approve Absolute not paying her</p> <p>15 commissions?</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Yes.</p> <p>18 A: That wouldn't have been my</p> <p>19 determination.</p> <p>20 Q: Were you involved in the</p> <p>21 determination?</p> <p>22 A: I don't recall.</p> <p>23 Q: Why would someone's commission --</p> <p>24 from an HR perspective, why would someone's</p> <p>25 commissions be withheld when the investigation</p>

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<p>1 D. Berardo</p> <p>2 had not even been completed?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: So I -- I can only -- I</p> <p>5 can only -- I can only speculate, like --</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: No, I'm not asking you to speculate.</p> <p>8 As an HR manager at Absolute --</p> <p>9 A: Right.</p> <p>10 Q: -- why would an employee's</p> <p>11 commissions be held under your tenure when the</p> <p>12 investigation into the issue had not been</p> <p>13 completed?</p> <p>14 A: So --</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: -- are we talking about</p> <p>17 in general? Or are we talking about the</p> <p>18 specific incident?</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: We'll take -- we'll take DOE</p> <p>21 specifically.</p> <p>22 A: Because I don't recall -- I don't</p> <p>23 recall why or why not for that --</p> <p>24 Q: Would there ever -- would there ever</p> <p>25 be a reason to withhold someone's commissions</p>	<p>Page 193</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Would that be consistent with</p> <p>4 Absolute's culture, though?</p> <p>5 A: Well --</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: -- absolutely not.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Isn't it true that Mary Piehler was</p> <p>10 totally exonerated on the issue of the DOE</p> <p>11 orders?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: I don't know if I would</p> <p>14 use those terms. I -- from what I recall,</p> <p>15 it was determined that -- that a definitive</p> <p>16 determination couldn't be made, and so the</p> <p>17 commissions were paid out as was booked.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: Isn't it true that Todd Awtry</p> <p>20 acknowledged that he had been told that that's</p> <p>21 how the commissions were paid?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: Were going to be paid?</p> <p>25 A: I don't recall.</p>	<p>Page 195</p>
<p>1 D. Berardo</p> <p>2 when an investigation hadn't been completed,</p> <p>3 again, in your role as head of HR at Absolute?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: During an</p> <p>6 investigation, if we were investigating</p> <p>7 something, I think it -- it would be</p> <p>8 justified to withhold commissions.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Would it be justified to withhold</p> <p>11 some people's commissions but not others?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: I mean -- I mean, it</p> <p>14 would depend on the circumstances. I don't</p> <p>15 know how to answer that.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: What about withholding them from the</p> <p>18 minority female employees, but paying them to</p> <p>19 the white male employees? Would that be</p> <p>20 acceptable?</p> <p>21 A: No, it wouldn't --</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: It would not be</p> <p>24 acceptable to withhold or not withhold</p> <p>25 based on race or gender.</p>	<p>Page 194</p> <p>1 D. Berardo</p> <p>2 Q: Well, then, how can -- how can you</p> <p>3 not recall that and recall that there was not</p> <p>4 complete exoneration for Mary Piehler?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: Well, I -- I recall --</p> <p>7 well, I don't recall that -- you're asking</p> <p>8 me -- you're asking me a specific question</p> <p>9 about Todd. I don't remember that</p> <p>10 interaction with Todd.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Do you remember there -- was there</p> <p>13 any wrongdoing associated with Mary Piehler</p> <p>14 coming out of the DOE investigation?</p> <p>15 A: I mean, I...</p> <p>16 Q: That you recall?</p> <p>17 A: That I recall?</p> <p>18 Q: Yeah.</p> <p>19 A: Not that I recall.</p> <p>20 Q: It's true that Todd Awtry tried to</p> <p>21 get Mary Piehler fired over the DOE</p> <p>22 commissions; correct?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: Not that I recall, no.</p> <p>25 MR. THOMAS: If the court reporter</p>	<p>Page 196</p>

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<p>1 D. Berardo</p> <p>2 could show the witness Awtry Exhibit 73 as</p> <p>3 well as Exhibit 74.</p> <p>4 THE WITNESS: Just while we're doing</p> <p>5 that, can I just take a quick break?</p> <p>6 MR. SULLIVAN: Sure.</p> <p>7 VIDEOGRAPHER: Going off the record.</p> <p>8 The time is 3:49.</p> <p>9 (PROCEEDINGS RECESSED AT 3:49?P.M.)</p> <p>10 (PROCEEDINGS RECONVENED AT 3:57 P.M.)</p> <p>11 VIDEOGRAPHER: Back on the record.</p> <p>12 The time is 3:57.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Okay. Let me show you what has been</p> <p>15 marked as Exhibit 73 and 74. Once you've had</p> <p>16 a chance to read them, let me know.</p> <p>17 A: Sure. Okay.</p> <p>18 Q: Does -- do these exhibits refresh</p> <p>19 your recollection as to whether Todd Awtry was</p> <p>20 trying to get Mary Piehler fired over the DOE</p> <p>21 issue?</p> <p>22 A: Does it -- does it -- I mean, I don't</p> <p>23 know how to answer that question. I mean,</p> <p>24 I -- I see here he asks -- he asks us:</p> <p>25 Do we have enough grounds to -- for</p>	<p>Page 197</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: Sure. 'I believe we</p> <p>3 do.'</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: All right. And then what did you --</p> <p>6 do you remember responding to him at all?</p> <p>7 A: I don't recall off the top -- I don't</p> <p>8 -- I don't recall if I responded or -- or</p> <p>9 didn't. I don't know.</p> <p>10 Q: Okay. Was this the email you saw in</p> <p>11 preparation for this deposition today?</p> <p>12 A: I don't -- I mean, thinking back, I</p> <p>13 think at one point, we did look at this email</p> <p>14 on Exhibit 73, but not -- I don't recall</p> <p>15 looking at 74. I could be wrong.</p> <p>16 Q: And on 74, he pushes again, doesn't</p> <p>17 he, for an answer to his question as to</p> <p>18 whether Mary Piehler can be fired, and he</p> <p>19 thought that there were grounds to do so.</p> <p>20 Right?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: Response to my</p> <p>23 question. I don't know what he was</p> <p>24 referring to.</p> <p>25 BY MR. THOMAS:</p>
<p>1 D. Berardo</p> <p>2 termination for all three?"</p> <p>3 Q: And what does he say immediately</p> <p>4 after that?</p> <p>5 A: So he says:</p> <p>6 I believe we do, but I want others'</p> <p>7 thoughts.'</p> <p>8 Q: So does that suggest to you that Todd</p> <p>9 Awtry was trying to get Mary Piehler fired</p> <p>10 over the DOE issue?</p> <p>11 A: No, I would say that he was asking</p> <p>12 for multiple people's opinions on if there was</p> <p>13 enough grounds for termination.</p> <p>14 Q: What was his opinion?</p> <p>15 A: Well, he says:</p> <p>16 I believe we do, but want others'</p> <p>17 thoughts.'</p> <p>18 Q: Yeah, so what was his opinion?</p> <p>19 A: I believe we do, but we want other's</p> <p>20 thoughts.'</p> <p>21 Q: No, no, I didn't ask you -- what --</p> <p>22 what was his opinion. His opinion was 'I</p> <p>23 believe we do'; correct?</p> <p>24 A: Oh.</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 198</p> <p>1 D. Berardo</p> <p>2 Q: What question had he asked the day</p> <p>3 before to the same recipients?</p> <p>4 A: So this was June 27th, 2014, at 10:33</p> <p>5 a.m. And then June 26th at 5:03 to Lee,</p> <p>6 Michael, Matt -- well, Matt's on this email,</p> <p>7 but not on this email. So it's not the same</p> <p>8 recipients. But on the --</p> <p>9 Q: Almost -- almost -- almost identical</p> <p>10 recipients. Fair to say?</p> <p>11 A: And here he includes Michael Kenny</p> <p>12 and Thomas -- or, sorry, Michael Kenny was</p> <p>13 involved -- or was in the June 26th email, but</p> <p>14 Thomas --</p> <p>15 Q: It's virtually the same -- it's</p> <p>16 virtually the same recipients. And the next</p> <p>17 morning, he had [indiscernible] demanding an</p> <p>18 answer to his question, didn't he?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: So I can't answer that</p> <p>21 because I don't know if this is related.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: And was...</p> <p>24 A: Like, the --</p> <p>25 Q: It's strange, isn't it --</p>

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<p>1 D. Berardo</p> <p>2 A: Okay.</p> <p>3 Q: -- that Todd Awtry is trying to get</p> <p>4 Mary Piehler fired, which is several months</p> <p>5 before Mary Piehler had told him about how the</p> <p>6 commissions would be allocated, and he thanked</p> <p>7 her for the heads-up. Right?</p> <p>8 MR. SULLIVAN: Object --</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Isn't that weird?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I think he was</p> <p>13 asking -- he was asking if there was enough</p> <p>14 grounds for termination.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: But why should there be enough</p> <p>17 grounds when three -- when, several months</p> <p>18 before, he was told by Mary this is the way</p> <p>19 things were going to be done, and he thanked</p> <p>20 her for it?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: I'm sorry. What</p> <p>23 exhibit was at that? Just to --</p> <p>24 MR. THOMAS: If the court reporter</p> <p>25 could show him Exhibit Awtry 71.</p>	<p>Page 201</p> <p>1 D. Berardo</p> <p>2 was trying to fire Mary. He asked, 'Do we</p> <p>3 have grounds enough for termination?'</p> <p>4 Q: Does it concern you that he thought</p> <p>5 there were grounds enough for termination</p> <p>6 when, several months before, he had been told</p> <p>7 how the allocation was going to go, and he</p> <p>8 thanked Mary Piehler for the heads-up?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: Does that concern you?</p> <p>12 A: I -- I don't know if he -- I don't</p> <p>13 know if he had agreed to this or he had forgot</p> <p>14 about this. You know...</p> <p>15 Q: My question to you is does it concern</p> <p>16 you?</p> <p>17 MR. SULLIVAN: Objection to form.</p> <p>18 THE WITNESS: I don't remember if it</p> <p>19 concerned me or not.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: Does it concern you sitting here</p> <p>22 today?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: Well, knowing the</p> <p>25 facts, it doesn't concern me.</p>
<p>1 D. Berardo</p> <p>2 THE WITNESS: Okay.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: So March 17th, Todd is told exactly</p> <p>5 how this allocation is going to go. He thanks</p> <p>6 Mary Piehler for it. And in June, he's trying</p> <p>7 to get her fired over it. Does that -- does</p> <p>8 that concern you at all?</p> <p>9 A: Well --</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: -- all I see is -- is</p> <p>12 he -- him saying 'thanks for the -- for</p> <p>13 heads -- thanks for heads-up.'</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Okay.</p> <p>16 A: I don't see any --</p> <p>17 Q: Does this concern you at all that he</p> <p>18 knew this was how the DOE was going to be</p> <p>19 allocated; he said 'thanks for the heads-up';</p> <p>20 and then, several months later, was trying to</p> <p>21 fire Mary Piehler over it?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: Does that concern you?</p> <p>25 A: Well, I don't -- I don't know if he</p>	<p>Page 202</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Why?</p> <p>4 A: Just because this email seems pretty</p> <p>5 ambiguous.</p> <p>6 Q: How is it ambiguous when it precisely</p> <p>7 describes the issue that he accused her of</p> <p>8 doing that resulted -- that resulted in her</p> <p>9 termination?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: Well, I don't -- I</p> <p>12 don't see him agreeing to -- to what she is</p> <p>13 proposing.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: You don't think 'thanks for the</p> <p>16 heads-up' is an agreement that the allocation</p> <p>17 is okay?</p> <p>18 A: I don't -- I don't think that.</p> <p>19 When -- when someone says 'thanks for the</p> <p>20 heads-up,' it doesn't say 'I agree,' no.</p> <p>21 Q: Okay. It -- can you think of any</p> <p>22 time in the company where a woman's word has</p> <p>23 been believed over a man's --</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 BY MR. THOMAS:</p>

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<p>1 D. Berardo</p> <p>2 Q: -- when you were the head of HR at</p> <p>3 Absolute?</p> <p>4 A: I mean, I -- absolutely, but I -- I</p> <p>5 can't think of specifics.</p> <p>6 Q: One example. Just give me one.</p> <p>7 A: I mean, I -- you're -- you're asking</p> <p>8 me something from five years -- five</p> <p>9 years-plus ago.</p> <p>10 Q: Yeah. Can you remember any time in</p> <p>11 the entire time you worked at Absolute for the</p> <p>12 five years that HR ever accepted the word of a</p> <p>13 man -- of a woman over a man?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: I -- I -- off the top</p> <p>16 of my head, I can't recall situations on</p> <p>17 either -- either way. I mean...</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: Well -- well, what about -- well, the</p> <p>20 last several we've been over, you have</p> <p>21 accepted the man's word over the woman's, no</p> <p>22 doubt. Right?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: Sorry -- sorry, what</p> <p>25 are you referencing?</p>	Page 205	Page 207
<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: I'm referencing Thomas Kenny's</p> <p>4 comment that made women feel uncomfortable,</p> <p>5 and they said that was typical of him, and</p> <p>6 nothing happened to Thomas Kenny, and --</p> <p>7 because it was believed it was not</p> <p>8 discrimination. I'm talking here about Todd</p> <p>9 Awtry approving the commission payments to</p> <p>10 Mary Piehler and trying to get her fired two</p> <p>11 months later and you, again, believing, as you</p> <p>12 sit here today, Todd Awtry over Mary Piehler.</p> <p>13 MR. SULLIVAN: Objection.</p> <p>14 THE WITNESS: That's --</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: So those are two examples going that</p> <p>17 way. Can you think of any examples where a</p> <p>18 woman has ever been believed at Absolute over</p> <p>19 a man?</p> <p>20 A: So --</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: -- sorry, you -- the</p> <p>23 way you described that was not accurate.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: Okay. Let's -- let's go back to the</p>	Page 206	Page 208

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<p>1 D. Berardo</p> <p>2 THE WITNESS: I don't have -- know</p> <p>3 how one equals the other. I think it was</p> <p>4 determined --</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: So let's -- okay. [Indiscernible] --</p> <p>7 MR. SULLIVAN: Wait a minute.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: -- [indiscernible] --</p> <p>10 MR. SULLIVAN: Had you --</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: -- [indiscernible] --</p> <p>13 MR. SULLIVAN: -- finished your --</p> <p>14 had you finished your answer?</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Well, if you don't understand the --</p> <p>18 if you don't understand the question, let me</p> <p>19 -- let me rephrase it.</p> <p>20 MR. SULLIVAN: I don't think he said</p> <p>21 he didn't understand it. He just hadn't</p> <p>22 finished answering.</p> <p>23 MR. THOMAS: Can the court reporter</p> <p>24 read back his answer.</p> <p>25 MR. SULLIVAN: The portion before you</p>	<p>Page 209</p> <p>1 D. Berardo</p> <p>2 heads-up.'</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: What -- what -- what is he doing</p> <p>5 there? Is he -- does he think the commission</p> <p>6 system is okay or not okay?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Okay. Is that something you should</p> <p>11 have looked at, given the fact that he tried</p> <p>12 to fire the employee two months later?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: From my recollection,</p> <p>15 the reason why this didn't move forward and</p> <p>16 was ambiguous was because of this email,</p> <p>17 so...</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: So why didn't you look at what Todd</p> <p>20 Awtry -- what Todd Awtry was up to?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: There were -- there</p> <p>23 were -- I -- I didn't -- I didn't have any</p> <p>24 concerns. I mean...</p> <p>25 BY MR. THOMAS:</p>
<p>1 D. Berardo</p> <p>2 cut him off?</p> <p>3 MR. THOMAS: Yeah.</p> <p>4 MR. SULLIVAN: Okay.</p> <p>5 THE COURT REPORTER: I actually</p> <p>6 didn't get it because of the interruptions.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: So let me tell you how one equals the</p> <p>9 other here. Mary Piehler sent this email to</p> <p>10 Todd Awtry in March. If Todd Awtry thought</p> <p>11 this was -- this commission system was grounds</p> <p>12 for termination, what he was doing was setting</p> <p>13 her up and waiting until several months later</p> <p>14 and then saying 'I think we have grounds to</p> <p>15 fire all three,' would that concern you?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: I -- I just don't agree</p> <p>18 with your assessment, so...</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Okay. And you don't agree with my</p> <p>21 assessment, because it appears as though Todd</p> <p>22 is saying it's fine; this commission system is</p> <p>23 fine. Right?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: He says 'thanks for</p>	<p>Page 210</p> <p>1 D. Berardo</p> <p>2 Q: You don't have any concerns when an</p> <p>3 employee -- when a manager is trying to fire</p> <p>4 an employee when he shouldn't, and he knows</p> <p>5 that -- he knows that he's not telling -- that</p> <p>6 the employee is doing things correctly?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: That doesn't concern you?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: Well -- well, that's</p> <p>12 why we had this investigation. Because the</p> <p>13 company investigated, and then it was</p> <p>14 determined, because of this email, that the</p> <p>15 allegation -- or the -- how the -- the</p> <p>16 businesses were booked, it was -- it was</p> <p>17 ambiguous, because this email that Mary had</p> <p>18 sent to Todd that said 'thanks for</p> <p>19 heads-up.'</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: And you didn't bother -- it didn't</p> <p>22 concern you at all to investigate what was --</p> <p>23 what Todd was up to?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: Well, I -- I -- from</p>

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<p>1 D. Berardo</p> <p>2 what I recall, Todd -- Todd forgot --</p> <p>3 forgot about this email.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: Well, forgot? Or did you investigate</p> <p>6 whether he truly forgot? Or did you look at</p> <p>7 it at all? Or did you just say, 'oh,</p> <p>8 whatever.'</p> <p>9 A: How would we --</p> <p>10 Q: 'A man is trying -- I hear a man is</p> <p>11 trying to fire a woman at Absolute. That --</p> <p>12 we didn't fire her, so we're not even going to</p> <p>13 bother looking into what the man is doing.'</p> <p>14 A: So --</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: -- just -- just to</p> <p>17 clarify again, he was asking for</p> <p>18 termination of all three, and there's --</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Okay. But [indiscernible] --</p> <p>21 A: -- two men --</p> <p>22 Q: -- about Mary --</p> <p>23 A: There's two men and one woman, so --</p> <p>24 Q: M'mm-hmm?</p> <p>25 A: -- so I -- no, I mean, the -- the</p>	<p>Page 213</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Okay. And what did you do to counsel</p> <p>4 Todd Awtry about his conduct in this</p> <p>5 situation?</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: I mean, I'm -- I'm --</p> <p>8 so I'm -- I'm certain that there were</p> <p>9 conversations with Todd. I -- I don't</p> <p>10 recall specifically what was said to him.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Did they include saying to him that</p> <p>13 he should not be treating his female</p> <p>14 subordinates the way he had been?</p> <p>15 A: No.</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: No, there was no</p> <p>18 conversations.</p> <p>19 UNIDENTIFIED SPEAKER: Can we just</p> <p>20 [indiscernible] --</p> <p>21 BY MR. THOMAS:</p> <p>22 Q: Sorry, go ahead.</p> <p>23 A: There was no conversations of that</p> <p>24 nature.</p> <p>25 Q: Because that was not something you</p>
<p>1 D. Berardo</p> <p>2 connection -- I mean, I didn't --</p> <p>3 Q: You didn't draw that?</p> <p>4 A: I didn't draw that --</p> <p>5 Q: You, as head of -- you, as head of</p> <p>6 HR, didn't draw the connection?</p> <p>7 A: I -- I -- no, I didn't draw the</p> <p>8 connection, and I -- and I still wouldn't draw</p> <p>9 it today.</p> <p>10 Q: You didn't draw the connection even</p> <p>11 after Ms. Piehler said that Todd Awtry was out</p> <p>12 to get her, didn't you?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: Out to get her?</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Yeah.</p> <p>17 A: I -- I don't recall her saying that.</p> <p>18 I mean, maybe she -- she did. I don't...</p> <p>19 Q: And you didn't investigate her</p> <p>20 complaints about Todd Awtry saying that she</p> <p>21 was stealing and lying falsely? You didn't</p> <p>22 even bother to look at that?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: This whole</p> <p>25 investigation was around that.</p>	<p>Page 214</p> <p>1 D. Berardo</p> <p>2 even investigated, was it?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: That he was</p> <p>5 discriminating against Mary because of her</p> <p>6 gender?</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: Correct.</p> <p>9 A: It was not something we investigated</p> <p>10 because it was not something that we thought</p> <p>11 was relevant in the situation.</p> <p>12 Q: It never crossed your mind, never</p> <p>13 raised a red flag; right?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: No, there -- there were</p> <p>16 three people involved in this situation,</p> <p>17 and two were male.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: Oh, so that means that that -- it</p> <p>20 couldn't be discrimination against Mary</p> <p>21 Piehler because of her gender?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: Well, I mean, no, I'm</p> <p>24 not saying that, but I'm -- I'm saying that</p> <p>25 there -- there was -- there would be no red</p>

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<p>1 D. Berardo</p> <p>2 flags in my head that this was because of</p> <p>3 her gender. That's what I'm telling you.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: Even when she complained about it, it</p> <p>6 raised no red flags?</p> <p>7 A: Complained that she was discriminated</p> <p>8 on because of her gender? Is that what you're</p> <p>9 asking me?</p> <p>10 Q: We'll -- we'll come back to that.</p> <p>11 A: Okay.</p> <p>12 MR. THOMAS: Let's go to -- if the</p> <p>13 court reporter could show the witness</p> <p>14 Exhibit Awtry 76.</p> <p>15 THE WITNESS: Okay.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: Just to get the timeline straight</p> <p>18 here, on June 26th, Todd Awtry is saying that</p> <p>19 he believes there's enough grounds to</p> <p>20 terminate Mary Piehler. Ultimately, she's not</p> <p>21 terminated because there -- she didn't do</p> <p>22 anything wrong. And then on July 2nd, what</p> <p>23 does she want to -- what does he want to do to</p> <p>24 Mary Piehler?</p> <p>25 A: So from reading this email, he wants</p>	<p>Page 217</p> <p>1 D. Berardo</p> <p>2 or what was back and forth after this specific</p> <p>3 email.</p> <p>4 Q: And just a few -- few moments ago,</p> <p>5 you said you didn't think that Mary Piehler</p> <p>6 was being treated differently because of her</p> <p>7 gender, but --</p> <p>8 A: Correct.</p> <p>9 Q: -- in an email a week later, you say:</p> <p>10 My only concern would be if we are</p> <p>11 singling her out.'</p> <p>12 So it did occur to you that you were -- that</p> <p>13 Mary Piehler was being singled out, didn't it?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: Singling -- yeah,</p> <p>16 singled out compared to her peers, the</p> <p>17 other regional directors.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: And did you conduct any investigation</p> <p>20 as to whether Mary Piehler was being singled</p> <p>21 out by Todd Awtry?</p> <p>22 A: Well, I had -- I asked the question,</p> <p>23 and he provided me the numbers.</p> <p>24 Q: And then did you conduct any further</p> <p>25 investigation as to -- I mean, would you be</p>
<p>1 D. Berardo</p> <p>2 to put her on a performance improvement plan</p> <p>3 because of her Manage and Service numbers.</p> <p>4 Q: So within five days of not being able</p> <p>5 to fire her, he then switches reasons and</p> <p>6 wants to put her on a PIP for something else;</p> <p>7 right?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: That's correct.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: And what do you tell him?</p> <p>12 A: So I -- I asked him -- I asked him</p> <p>13 about:</p> <p>14 Would we be singling her out by</p> <p>15 putting her on a PIP? We just came off an</p> <p>16 investigation, so things are a little</p> <p>17 sensitive. Are there any RDs in the same</p> <p>18 boat?</p> <p>19 Q: And were you the one who stopped the</p> <p>20 PIP from going forward?</p> <p>21 A: I mean, I don't recall specifically,</p> <p>22 but, I mean, I -- you know, judging from this</p> <p>23 email, it seems like, you know, I may have</p> <p>24 advised against it. I -- I don't know what</p> <p>25 the sequence of events were after this email</p>	<p>Page 218</p> <p>1 D. Berardo</p> <p>2 concerned to find out that a manager was</p> <p>3 singling out one of his subordinates?</p> <p>4 A: Well, for performance, that wouldn't</p> <p>5 concern me.</p> <p>6 Q: Okay. But you, in this case,</p> <p>7 indicated that the PIP shouldn't go forward;</p> <p>8 correct?</p> <p>9 A: I -- I don't think I indicated that.</p> <p>10 I -- I asked the question.</p> <p>11 Q: Okay. And so did you do anything</p> <p>12 else to follow up on your question about</p> <p>13 whether she was being singled out after you</p> <p>14 got Todd's answer?</p> <p>15 A: I don't -- I don't recall what</p> <p>16 happened after Todd responded to me. I don't</p> <p>17 remember.</p> <p>18 Q: You don't remember doing any</p> <p>19 investigation as to whether it was for</p> <p>20 discrimination or other reasons; right?</p> <p>21 A: No, there was -- there was no</p> <p>22 discrimination brought to me, so I don't</p> <p>23 recall any sort of investigations around</p> <p>24 discrimination. Based on -- you know, based</p> <p>25 on gender or -- or any protected grounds.</p>

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<p>1 D. Berardo</p> <p>2 This was about performance.</p> <p>3 Q: Well, when a -- when a manager is</p> <p>4 singling out</p> <p>5 a woman on his staff for a PIP and a</p> <p>6 termination for reasons that he had been</p> <p>7 informed were okay, it never -- it doesn't --</p> <p>8 that -- discrimination didn't cross your mind?</p> <p>9 That's the type of HR culture you were running</p> <p>10 there?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: The -- the PIP was</p> <p>13 concerning her performance, so he may have</p> <p>14 been singling her -- her out based on her</p> <p>15 performance with her peers, and that</p> <p>16 happens all the time.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: You -- it didn't -- it didn't strike</p> <p>19 you as coincidental that, within a week of</p> <p>20 Todd failing to get Mary fired on the DOE</p> <p>21 issue, that he's coming back and trying to put</p> <p>22 her on a PIP for something else?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: Well, I mean, the --</p> <p>25 the -- the new fiscal year starts in July</p>	<p>Page 221</p> <p>1 D. Berardo</p> <p>2 it?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: To follow an order from</p> <p>5 a CEO, and then be put on a PIP because you</p> <p>6 followed that order?</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: Yeah.</p> <p>9 A: I -- yeah, I would say that would be</p> <p>10 strange.</p> <p>11 Q: Are you aware that Geoff Haydon said</p> <p>12 that he wanted the company to focus on selling</p> <p>13 Computrace and only sell Manage and Service to</p> <p>14 current clients?</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: I mean, I don't -- I</p> <p>17 don't recall that, but...</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: Do you have any reason to doubt that</p> <p>20 was true?</p> <p>21 A: No.</p> <p>22 Q: And what is Mr. Awtry faulting</p> <p>23 Ms. Piehler for here as to why she was -- why</p> <p>24 she was being singled out?</p> <p>25 A: Well, this was Manage and Service.</p>	<p>Page 223</p>
<p>1 D. Berardo</p> <p>2 of every year, I believe, from Absolute.</p> <p>3 So, I mean, it -- it -- it didn't -- it</p> <p>4 didn't concern me about any sort of</p> <p>5 protected discrimination.</p> <p>6 MR. THOMAS: Could you read --</p> <p>7 Jessica, could you read the question back</p> <p>8 to Mr. Berardo.</p> <p>9 (REPORTER READ BACK)</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: I -- I wouldn't say</p> <p>12 it's coincidental, but, obviously, I had a</p> <p>13 -- I had a concern, and I asked the</p> <p>14 question. So I had a concern enough that I</p> <p>15 asked the question about her performance.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: All right. Have you ever heard of an</p> <p>18 employee being put on a PIP for following a</p> <p>19 CEO's direction?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: A: CEO's direction?</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Yes.</p> <p>24 A: I mean, not off the top of my head.</p> <p>25 Q: It would be kind of strange, wouldn't</p>	<p>Page 222</p> <p>1 D. Berardo</p> <p>2 MR. THOMAS: Now, let's -- if the</p> <p>3 court reporter could mark Exhibit Berardo</p> <p>4 L. And, Jessica, are you -- when I'm doing</p> <p>5 new exhibits that you have, are you going</p> <p>6 off numerically from where we left off at</p> <p>7 85?</p> <p>8 THE COURT REPORTER: Yes, if that's</p> <p>9 what you would like.</p> <p>10 MR. THOMAS: Perfect.</p> <p>11 THE COURT REPORTER: Okay.</p> <p>12 MR. THOMAS: Let's go off the record</p> <p>13 for a second.</p> <p>14 VIDEOGRAPHER: Going off record. The</p> <p>15 time is 4:23.</p> <p>16 (PROCEEDINGS RECESSED AT 4:23 P.M.)</p> <p>17 (PROCEEDINGS RECONVENED AT 4:25?P.M.)</p> <p>18 VIDEOGRAPHER: Back on the record.</p> <p>19 The time is 4:25.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: Mr. Berardo, you're free to read as</p> <p>22 much of Exhibit 86 as you would like.</p> <p>23 However, I'm only going to be really asking</p> <p>24 you about the forwarding emails from</p> <p>25 Mr. Awtry. So let me know when you're ready.</p>	<p>Page 224</p>

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<p>1 D. Berardo</p> <p>2 A: The -- sorry, the -- the from email</p> <p>3 from Mr. Awtry?</p> <p>4 Q: Yeah, where he says:</p> <p>5 I highlighted a few, but encourage</p> <p>6 you to read all of it.'</p> <p>7 MS. LESTRADE: Oh. That is not</p> <p>8 exhibit -- what has been marked as</p> <p>9 Exhibit 86.</p> <p>10 MR. THOMAS: Okay. What is the Bates</p> <p>11 number at the bottom of that, Jessica?</p> <p>12 Let's -- let's go off the record.</p> <p>13 VIDEOGRAPHER: Going off record. The</p> <p>14 time is 4:26.</p> <p>15 (PROCEEDINGS RECESSED AT 4:26?P.M.)</p> <p>16 (PROCEEDINGS RECONVENED AT 4:38?P.M.)</p> <p>17 VIDEOGRAPHER: Back on the record.</p> <p>18 The time is 4:39.</p> <p>19 (Exhibit 86 was marked for</p> <p>20 identification and is attached hereto.)</p> <p>21 BY MR. THOMAS:</p> <p>22 Q: All right. Let me start again, Mr.</p> <p>23 Berardo. Sorry for that confusion there.</p> <p>24 You're welcome to read as much as Exhibit 86</p> <p>25 as you would like, which, for the record, is</p>	<p>Page 225</p> <p>1 D. Berardo</p> <p>2 Piehler's comments on Todd Awtry and -- and</p> <p>3 his job.</p> <p>4 Why was Todd Awtry forwarding you</p> <p>5 this email in August?</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: So, from what I recall,</p> <p>8 he was -- he was -- he was just made --</p> <p>9 made aware. He was made aware of this</p> <p>10 email.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: He was just made aware of that email?</p> <p>13 A: I mean, from my recollection, he was</p> <p>14 just --</p> <p>15 Q: I will testify to you that -- I will</p> <p>16 represent to you that his testimony was that</p> <p>17 he was aware of the email almost --</p> <p>18 A: Okay.</p> <p>19 Q: -- at the time it was -- it was sent,</p> <p>20 so --</p> <p>21 A: Okay. So -- so my recollection is</p> <p>22 incorrect. So -- so did he -- had he just</p> <p>23 received the email? Or he said that he's had</p> <p>24 this email for a long time?</p> <p>25 Q: He said that he had the email for a</p>
<p>1 D. Berardo</p> <p>2 Bates number DEFS08824 to DEFS08830. But I'm</p> <p>3 only going to really ask you about the very</p> <p>4 top of the first page, which is Todd sending</p> <p>5 you this email.</p> <p>6 So let me know when you're ready,</p> <p>7 and I can ask you questions.</p> <p>8 A: Sure. I don't -- I don't need to --</p> <p>9 unless you want me to read it all, I don't</p> <p>10 need to read it all, just because you --</p> <p>11 Q: No, I --</p> <p>12 A: I --</p> <p>13 Q: -- don't -- I don't need you to.</p> <p>14 A: Okay.</p> <p>15 Q: Okay. So, now, just for the -- for</p> <p>16 the sake of chronology, back at the end of</p> <p>17 June, very end of June, Todd Awtry says that</p> <p>18 he thinks he has grounds to fire Mary Piehler.</p> <p>19 HR gets involved. Mary Piehler is not fired.</p> <p>20 July 2nd, about a week later, he tries to put</p> <p>21 Mary Piehler on a PIP. Again, involves HR.</p> <p>22 And she is not put on a PIP. Then a month</p> <p>23 later in August, he is forwarding to you an</p> <p>24 email that Mary Piehler wrote -- oh, what was</p> <p>25 that? -- 15 months before and -- about Mary</p>	<p>Page 226</p> <p>1 D. Berardo</p> <p>2 long time.</p> <p>3 A: Okay. Fair enough. I -- I don't</p> <p>4 recall why he sent it to me on the 15th of</p> <p>5 August.</p> <p>6 Q: Was he still trying to get Mary</p> <p>7 fired?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: I don't recall our</p> <p>10 conversations about this email.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Or trying to put her in a bad light?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: That -- that would be</p> <p>15 more of a question for Todd.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: It seems like every couple of weeks</p> <p>18 or months starting in June, he's on Mary</p> <p>19 Piehler's tail, singling her out to HR in</p> <p>20 various ways. Is that fair to say?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: I wouldn't say singling</p> <p>23 out, no. That -- that wouldn't be</p> <p>24 accurate.</p> <p>25 BY MR. THOMAS:</p>

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<p>1 D. Berardo</p> <p>2 Q: Well -- well, I think that's the word</p> <p>3 that you used; right? 'Singling out'?</p> <p>4 A: Not in that context.</p> <p>5 Q: What context -- what context did you</p> <p>6 not use it -- I mean, what context did you use</p> <p>7 it in?</p> <p>8 A: If I -- if I can see the prior</p> <p>9 exhibit, then I can -- I can tell you exactly</p> <p>10 how I was...</p> <p>11 Q: Exhibit 70 -- we -- we don't need to</p> <p>12 do that. We -- we've been through that --</p> <p>13 A: Okay.</p> <p>14 Q: -- your use of the word -- I -- when</p> <p>15 I said 'singling,' I was only, you know, using</p> <p>16 your phrase.</p> <p>17 But why is -- as an HR person,</p> <p>18 aren't you a little concerned at this point</p> <p>19 that you've got a manager trying to -- trying</p> <p>20 to go after one of his employees again and</p> <p>21 again and again?</p> <p>22 MR. SULLIVAN: Objection to form.</p> <p>23 THE WITNESS: Are you asking me about</p> <p>24 this specific email? Or --</p> <p>25 BY MR. THOMAS:</p>	Page 229	Page 231
<p>1 D. Berardo</p> <p>2 Q: This email with -- what was preceded</p> <p>3 by the PIP email that was preceded by the</p> <p>4 termination email. We had three -- three</p> <p>5 attempts in a row by Todd Awtry to -- to go</p> <p>6 after Mary Piehler in the space of a month and</p> <p>7 a half.</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: In my opinion, they</p> <p>10 were all valid concerns.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Well, the DOE was not a valid</p> <p>13 concern, was it? She didn't do anything wrong</p> <p>14 there.</p> <p>15 A: So it was -- it was determined that</p> <p>16 it was inconclusive.</p> <p>17 Q: Okay. So that was not a valid</p> <p>18 concern, was it?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: It was a valid concern</p> <p>21 -- when we did the investigation, it was,</p> <p>22 yes.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: Well, was it a valid concern for him</p> <p>25 who, two months before, knew how the</p>	Page 230	Page 232

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<p>1 D. Berardo</p> <p>2 Q: And not only is Todd out to get Mary</p> <p>3 in each of these situations, but they're all</p> <p>4 sort of different; right? Tries one; it</p> <p>5 doesn't work. Tries something else; it</p> <p>6 doesn't work. Tries something else; it</p> <p>7 doesn't work. Right?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: No, I wouldn't</p> <p>10 characterize it like that.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q:Okay. And you didn't investigate to</p> <p>13 see how it should be characterized, did you?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: Investigate what?</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: How Todd Awtry was going after Mary</p> <p>18 Piehler?</p> <p>19 A: There was --</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: There was nothing to</p> <p>22 investigate.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: And when you saw the email from Mary</p> <p>25 Piehler with Jermaine O'Dondow [phonetic] down</p>	<p>Page 233</p> <p>1 D. Berardo</p> <p>2 Q: Why don't you read it over, and when</p> <p>3 you've had a chance, I will have some</p> <p>4 questions for you on it.</p> <p>5 A: Oh, this was in order, actually, from</p> <p>6 front to back. I read the last -- I will</p> <p>7 start at the beginning. Okay.</p> <p>8 Q: All right. Did you take any steps to</p> <p>9 probe the complaints made by Mary Piehler in</p> <p>10 this exhibit?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I can't recall</p> <p>13 specifically, but -- but reading through</p> <p>14 it, it's -- the numbers -- I mean, the</p> <p>15 numbers seemed like they were system</p> <p>16 issues, so I likely wouldn't have</p> <p>17 investigated that.</p> <p>18 MR. THOMAS: I will request any</p> <p>19 documentation -- any HR review that was</p> <p>20 performed of this --</p> <p>21 THE WITNESS: Not --</p> <p>22 MR. THOMAS: -- exhibit.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: I will just give one example.</p> <p>25 A: Not to my recollection.</p>
<p>1 D. Berardo</p> <p>2 below, you didn't recommend Ms. Piehler's</p> <p>3 termination, did you?</p> <p>4 A: I don't -- I don't recall what --</p> <p>5 what was discussed.</p> <p>6 Q: Do you -- do you recall any</p> <p>7 discussions that she should be disciplined?</p> <p>8 A: I don't -- I don't recall our</p> <p>9 discussions, no.</p> <p>10 Q: Okay. And you don't recall any</p> <p>11 discussions that she should be counselled?</p> <p>12 A: No, I don't recall any discussions.</p> <p>13 Q: Or terminated?</p> <p>14 A: I mean, I just don't remember if we</p> <p>15 had those conversations. I don't know.</p> <p>16 Q: All right. Let's go to Exhibit 21,</p> <p>17 if that could be marked.</p> <p>18 MR. SULLIVAN: Shouldn't need to mark</p> <p>19 it. It's already been marked.</p> <p>20 THE COURT REPORTER: So, sorry, am I</p> <p>21 marking it 87?</p> <p>22 MR. SULLIVAN: No, it's already been</p> <p>23 marked as 21.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 BY MR. THOMAS:</p>	<p>Page 234</p> <p>1 D. Berardo</p> <p>2 Q: In the second line, she says:</p> <p>3 I don't want to be known as a</p> <p>4 troublemaker.'</p> <p>5 Right?</p> <p>6 A: Okay.</p> <p>7 Q: Third line, she says she wants to be</p> <p>8 paid -- paid fairly. At the bottom paragraph,</p> <p>9 she refers to a man who's getting paid full</p> <p>10 value, and she isn't getting commissions and</p> <p>11 under investigation for selling DOE. Do you</p> <p>12 see those comments?</p> <p>13 A: I do, yes.</p> <p>14 Q: Okay. Did you see them at the -- did</p> <p>15 you read them at the time?</p> <p>16 A: I would have, yes.</p> <p>17 Q: Is this an example of you thinking</p> <p>18 that Mary Piehler was passionate or difficult</p> <p>19 to deal with?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: I mean, I don't -- I</p> <p>22 don't recall what I thought when I received</p> <p>23 the email. I don't remember.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: Didn't you make a comment like that</p>

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<p>1 D. Berardo</p> <p>2 earlier today? That you thought that Mary</p> <p>3 could be passionate in her communication?</p> <p>4 A: I don't -- I don't recall. We can</p> <p>5 definitely read back what I -- what I wrote</p> <p>6 [sic], if you like.</p> <p>7 Q: Well, do you think she -- do you</p> <p>8 think she was passionate in her -- in her</p> <p>9 communications?</p> <p>10 A: Was she -- was she passionate? I</p> <p>11 mean, she didn't shy away from communicating.</p> <p>12 Q: Did you -- you talked before about</p> <p>13 how you had conversations with her, and they</p> <p>14 would end up going round and round. Do you</p> <p>15 remember that?</p> <p>16 A: They would go around in circles</p> <p>17 sometimes, yes.</p> <p>18 Q: Is this an example of it going around</p> <p>19 in circles?</p> <p>20 A: Well, I don't -- I don't think so.</p> <p>21 It's one -- it's a -- one email to me. So I</p> <p>22 can't recall if I went around and around with</p> <p>23 her.</p> <p>24 Q: Okay. Turning to the last page, do</p> <p>25 you see that under number 4, about seven lines</p>	<p>Page 237</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: I -- I don't think</p> <p>4 that -- again, from -- from anyone that --</p> <p>5 anyone, it would be valid to say they want</p> <p>6 to be paid fairly.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: And if they take that to HR, that's</p> <p>9 something that HR should look at; right?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: If they say that they</p> <p>12 were paid unfairly because they were</p> <p>13 female? Or because of gender? Is that</p> <p>14 what you're asking me?</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Well, I'm asking -- let's just start</p> <p>17 with someone who says 'I'm not being paid</p> <p>18 fairly' and goes to HR. Should HR look at</p> <p>19 that?</p> <p>20 A: We -- it happens all the time, and</p> <p>21 people's perception of being paid fairly, it's</p> <p>22 just --</p> <p>23 Q: I'm asking whether HR should look at</p> <p>24 that issue.</p> <p>25 A: We should talk to the employee and</p>
<p>1 D. Berardo</p> <p>2 down, she says:</p> <p>3 All I asked was to be treated the</p> <p>4 same.'</p> <p>5 Do you see that?</p> <p>6 A: Can you -- so it's, sorry, the</p> <p>7 second-to-last page?</p> <p>8 Q: Second-to-last page. P818, item</p> <p>9 number 4. Six, seven lines down:</p> <p>10 All I asked was to be treated the</p> <p>11 same.'</p> <p>12 Do you see that?</p> <p>13 A.'All I asked was to be treated the</p> <p>14 same.'</p> <p>15 Yeah.</p> <p>16 Q: Was that an unfair request from a</p> <p>17 woman at Absolute?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: Yeah, I would say</p> <p>20 it's a -- no, it's a fair request from</p> <p>21 anyone at Absolute.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Is it a fair request from someone at</p> <p>24 Absolute that they want to be -- from a woman</p> <p>25 at Absolute, that she wants to be paid fairly?</p>	<p>Page 238</p> <p>1 D. Berardo</p> <p>2 ask what the employee may be speaking of.</p> <p>3 MR. THOMAS: Going to page -- we --</p> <p>4 and we will request documentation of that</p> <p>5 ever occurring.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Going to page P817, do you remember</p> <p>8 that Todd Awtry shared the performance reviews</p> <p>9 of his subordinates with all of his</p> <p>10 subordinates --</p> <p>11 A: Yes.</p> <p>12 Q: -- by email?</p> <p>13 A: I do remember that.</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Is that an example of him in his</p> <p>17 professional, buttoned-up attitude that he was</p> <p>18 bringing to Absolute?</p> <p>19 A: I would say that's not an -- not an</p> <p>20 example of that.</p> <p>21 Q: Did you see that Mary Piehler</p> <p>22 complained about him doing that?</p> <p>23 A: Did she -- sorry, in this thread,</p> <p>24 she -- did she complain to me about it, sorry?</p> <p>25 Q: P817.</p>

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<p>1 D. Berardo</p> <p>2 A: 17. So, sorry, because there's -- it</p> <p>3 -- it doesn't show who this was sent to on my</p> <p>4 copy.</p> <p>5 Q:Okay. If you go to the top of page</p> <p>6 P811, who is dberardo@absolute.com?</p> <p>7 A: So you're asking me who</p> <p>8 dberardo@absolute.com is?</p> <p>9 Q: M'mm-hmm.</p> <p>10 A: That's me.</p> <p>11 Q:Okay. And do you see in the first</p> <p>12 line where it says 'Daniel'?</p> <p>13 A: Yes. No, there was a -- there's a</p> <p>14 whole bunch of --</p> <p>15 Q:Okay. So I'm ask -- so would you go</p> <p>16 to page 817. Do you see in there where she</p> <p>17 tells you that -- that these emails were sent</p> <p>18 out to everybody in her group?</p> <p>19 A: Yeah, and I recall -- I recall this.</p> <p>20 Q:Okay. And in the paragraph above,</p> <p>21 she mentions the fact that a manager who was</p> <p>22 there less than six months, Troy, a male, is</p> <p>23 able to get a higher performance rating, and</p> <p>24 his commentary is the same as hers, which is</p> <p>25 'I have not had a chance to observe the</p>	<p>Page 241</p> <p>1 D. Berardo</p> <p>2 (PROCEEDINGS RECONVENED AT 5:13 P.M.)</p> <p>3 VIDEOGRAPHER: Back on the record.</p> <p>4 The time is 5:13.</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: All right, Mr. Berardo. Thank you</p> <p>7 for that break there. Would it be fair to say</p> <p>8 that at Absolute when women complained about</p> <p>9 how they were being treated, that their</p> <p>10 complaints just kind of disappeared?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: It would not be fair to</p> <p>13 say.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Kind of ignored?</p> <p>16 A: No.</p> <p>17 Q: Well, let's -- let's take a look</p> <p>18 here, if we could.</p> <p>19 And if the court reporter could show</p> <p>20 Mr. Berardo Piehler Exhibit 22. You can read</p> <p>21 as much of it as you want. I -- why don't --</p> <p>22 yeah, why don't you go ahead and read the</p> <p>23 whole thing, and let me know when you're done.</p> <p>24 I'm not going to be going over the jellybean</p> <p>25 stuff at the end, but you can read whatever --</p>
<p>1 D. Berardo</p> <p>2 competency.' That's what Todd Awtry said.</p> <p>3 Did you look into that, as to why a male could</p> <p>4 -- could -- with less than six months'</p> <p>5 experience get a higher score on a</p> <p>6 performance --</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: -- review than Mary Piehler when Todd</p> <p>10 Awtry said he didn't have any basis to do the</p> <p>11 review?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: I don't -- I don't</p> <p>14 recall -- I don't recall looking into</p> <p>15 specific performance reviews.</p> <p>16 MR. THOMAS: We would request the</p> <p>17 production of any documents reflecting any</p> <p>18 HR review of those issues.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Now, Mr. Berardo, what -- what --</p> <p>21 well, let's do this: Let's just go off the</p> <p>22 record for five minutes here. Thanks.</p> <p>23 VIDEOGRAPHER: Going off record. The</p> <p>24 time is 5:04. This is the end of media 1.</p> <p>25 (PROCEEDINGS RECESSED AT 5:04?P.M.)</p>	<p>Page 242</p> <p>1 D. Berardo</p> <p>2 as much as -- as much as you would like.</p> <p>3 A: Okay.</p> <p>4 Q: All right. I would like to direct</p> <p>5 your attention to DEFS2550 and the very top</p> <p>6 email from you.</p> <p>7 A: M'mm-hmm.</p> <p>8 Q: You say:</p> <p>9 Thanks, Mary. I don't recall ever</p> <p>10 having a conversation about your</p> <p>11 performance reviews with Todd. In fact, I</p> <p>12 don't even recall a conversation with you</p> <p>13 about not receiving your last performance</p> <p>14 review. Of course, I've had a lot of</p> <p>15 conversations, so I can't say for certain.</p> <p>16 My memory has failed me in the past. It's</p> <p>17 not my practice to discuss private</p> <p>18 conversations, though, so I apologize if</p> <p>19 this did happen.'</p> <p>20 Do you see your comment there?</p> <p>21 A: I do see my comment, yes.</p> <p>22 Q: And what date was that?</p> <p>23 A: It looks like it's August 11th, 2014.</p> <p>24 Q: How long before that had Mary Piehler</p> <p>25 complained about the evaluations with Todd?</p>

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<p>1 D. Berardo</p> <p>2 A: The -- him sending out the -- the</p> <p>3 numbers?</p> <p>4 Q: If you look at Exhibit 21, I think it</p> <p>5 will refresh your recollection.</p> <p>6 A: It was July 6th, 2014.</p> <p>7 Q: So how -- how -- how long between the</p> <p>8 two -- between the two emails?</p> <p>9 A: So July 6th, 2014, and August 6th,</p> <p>10 2014. Or August 11th. So just over a month.</p> <p>11 Q: Okay. So, like, a month and five</p> <p>12 days. You totally forgot about Mary -- Mary</p> <p>13 Piehler's complaints about how her manager was</p> <p>14 evaluating her; correct?</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: I say:</p> <p>17 In fact, I don't even recall a</p> <p>18 conversation with you about not receiving</p> <p>19 your last performance review.'</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: If you go to Exhibit 21, page P817,</p> <p>22 Ms. Piehler says, at the second paragraph:</p> <p>23 However, what I questioned even more</p> <p>24 was that I still have never had a</p> <p>25 performance review with Todd? Not to</p>	<p>Page 245</p> <p>1 D. Berardo</p> <p>2 'I don't remember a conversation with you'</p> <p>3 when -- when you're referring to an email they</p> <p>4 sent you complaining about discrimination?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: So the email that she</p> <p>7 sent to me was not complaining about</p> <p>8 discrimination, and I said, 'I -- I don't</p> <p>9 even recall -- I don't recall the</p> <p>10 conversation with you.' So I think --</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: So you had forgotten about it within</p> <p>13 a month?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: I mean, we're talking</p> <p>16 about a conversation, so I'm not sure -- I</p> <p>17 have to read this email over again to see</p> <p>18 if Mary's --</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Sure.</p> <p>21 A: -- referring --</p> <p>22 Q: Read it again.</p> <p>23 A: -- referring to a conversation or the</p> <p>24 email she sent me.</p> <p>25 Q: I don't want us to keep going around</p>
<p>1 D. Berardo</p> <p>2 mention, I do find it unprofessional that</p> <p>3 he shares these ratings with an email</p> <p>4 distribution list.'</p> <p>5 A: Okay.</p> <p>6 Q: So within the space of a month, you</p> <p>7 thought that you had forgotten about Mary</p> <p>8 Piehler's complaint about how Todd was</p> <p>9 treating her in terms of her performance</p> <p>10 evaluations. Fair to say?</p> <p>11 A: No. I said:</p> <p>12 In fact, I don't recall a</p> <p>13 conversation with you about receiving your</p> <p>14 last performance review.'</p> <p>15 Q: Oh, but you meant you did remember an</p> <p>16 email, but you didn't remember a conversation?</p> <p>17 A: I -- I don't recall what I -- I</p> <p>18 don't -- I don't recall what I remember or</p> <p>19 don't remember back then. I'm just going --</p> <p>20 Q: Okay.</p> <p>21 A: -- by what's --</p> <p>22 Q: Well, let's look --</p> <p>23 A: -- in the email.</p> <p>24 Q: -- at what you said. Do you consider</p> <p>25 it truthful and transparent to say to someone</p>	<p>Page 246</p> <p>1 D. Berardo</p> <p>2 and around about this, Mr. Berardo. I think</p> <p>3 it's important that we get to the point.</p> <p>4 A: Sure. Absolutely.</p> <p>5 So, I mean, just reading from the emails,</p> <p>6 it -- it might be possible that I didn't</p> <p>7 remember this one line from this nine-page</p> <p>8 email a month and a half ago.</p> <p>9 Q: Well, let's -- let's count the lines</p> <p>10 of that. Let's go to P817. It actually</p> <p>11 starts on page 816, number 3, 'manager</p> <p>12 performance reviews.' Bold, highlighted. 1,</p> <p>13 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,</p> <p>14 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,</p> <p>15 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,</p> <p>16 37, 38, 39, 40, 41, 42, 43, 44 -- 46, 47, 48,</p> <p>17 49, 50. Really, 50 lines in that email;</p> <p>18 right? About it?</p> <p>19 MR. SULLIVAN: Objection to form. 50</p> <p>20 lines -- I'm sorry. 50 lines in the</p> <p>21 entire --</p> <p>22 MS. LESTRADE: Nine-page email?</p> <p>23 MR. SULLIVAN: -- the nine-page</p> <p>24 document, Exhibit 21?</p> <p>25 MR. THOMAS: In Exhibit 21, yes.</p>

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<p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Are you --</p> <p>3 MR. THOMAS: [Indiscernible] --</p> <p>4 MR. SULLIVAN: -- representing that</p> <p>5 Exhibit 21 is 50 lines?</p> <p>6 MR. THOMAS: No, I'm representing</p> <p>7 that there's 50 lines of discussion</p> <p>8 relating to the performance evaluation.</p> <p>9 MR. SULLIVAN: Okay. So --</p> <p>10 MR. THOMAS: I'm not representing</p> <p>11 anything. I'm asking -- if he doesn't</p> <p>12 think there's 50 lines there, he can let me</p> <p>13 know. But I don't -- he -- he testified</p> <p>14 under oath that there was 1.</p> <p>15 MR. SULLIVAN: I'm -- I'm just</p> <p>16 confused. 50 lines of what? Just so we're</p> <p>17 clear on that.</p> <p>18 MR. THOMAS: Discussion about his --</p> <p>19 the performance evaluation. Three</p> <p>20 managers' performance reviews. It deals</p> <p>21 with two issues: Not receiving a</p> <p>22 performance evaluation --</p> <p>23 MS. LESTRADE: Two issues.</p> <p>24 MR. THOMAS: -- and two then being</p> <p>25 emails sent out to everybody in the</p>	Page 249	Page 251
<p>1 D. Berardo</p> <p>2 company.</p> <p>3 THE WITNESS: Okay. Well, I was</p> <p>4 referring to this line:</p> <p>5 However, what I questioned even more</p> <p>6 was that I still never had a performance</p> <p>7 review with Todd.'</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Well, let's go back. What about the</p> <p>10 first line:</p> <p>11 I emailed Tina on December 30th to</p> <p>12 see if there was ever a review done for me</p> <p>13 by Todd. Her email -'</p> <p>14 A: Okay.</p> <p>15 Q: -- exchange is below.'</p> <p>16 A: Okay.</p> <p>17 Q: Have you ever seen the review he</p> <p>18 wrote for me? I attached the PDF. Todd</p> <p>19 wrote one sentence for each category. I</p> <p>20 only had six months' visibility to observe</p> <p>21 this competency."</p> <p>22 I won't keep reading it, but it's fair to say</p> <p>23 that her complaint didn't -- wasn't 1 line;</p> <p>24 correct?</p> <p>25 A. Okay. It was more than 1 line.</p>	Page 250	Page 252

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<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Okay. It's possible you could have</p> <p>4 ignored it; it's possible you just forgot it?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: That's your opinion.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: No, I'm asking you for your -- for</p> <p>9 what you mean by 'I don't -- it -- it could</p> <p>10 be.' What --</p> <p>11 MR. SULLIVAN: Objection --</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: -- [indiscernible] --</p> <p>14 MR. SULLIVAN: -- to form.</p> <p>15 THE WITNESS: I didn't say it could</p> <p>16 be. I said I don't --</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: Okay. Well, what -- did -- did you</p> <p>19 forget it?</p> <p>20 A: No, I said I don't recall.</p> <p>21 Q: Or did you just never read it to</p> <p>22 begin with?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: I don't recall. I</p> <p>25 don't have a recollection of it.</p>	<p>Page 253</p> <p>1 D. Berardo</p> <p>2 asked about something, denying it, and then</p> <p>3 someone thinking I did not tell the truth</p> <p>4 when, in -- when, in reality, it is true</p> <p>5 and documented. I would not tell HR or an</p> <p>6 ELT member anything I could not</p> <p>7 substantiate.'</p> <p>8 Do you see that?</p> <p>9 A: I see that, yes.</p> <p>10 Q: Do you think Mary Piehler could have</p> <p>11 felt that when she was communicating with you</p> <p>12 it just ended up that your -- her complaints</p> <p>13 to you were ignored, and that it just went</p> <p>14 around and around, and you would forget</p> <p>15 things, and you wouldn't pay attention to what</p> <p>16 was going on, and she just -- it was very</p> <p>17 difficult communicating with you?</p> <p>18 A: Absolutely --</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: Absolutely not. We</p> <p>21 talked on a number of occasions.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Okay. But, well, she raises a major</p> <p>24 concern with you about how her male superior</p> <p>25 is conducting her performance appraisals, the</p>
<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Okay. It could be either of those?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: I don't have a</p> <p>6 recollection of it, so I can't answer that</p> <p>7 question.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Okay. Well, I'm asking you could it</p> <p>10 be anything else besides those two, that you</p> <p>11 never read it, or you forgot about it?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: I mean, yeah, I could</p> <p>14 have forgotten about it. I -- I mean, I --</p> <p>15 I doubt that I wouldn't have read it. But</p> <p>16 I may have forgotten that I had -- didn't</p> <p>17 read these two sentences in this nine-page</p> <p>18 email.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Okay. And you -- do you understand</p> <p>21 why -- well, let's -- let's go to Mary</p> <p>22 Piehler's comment on Exhibit 22 where she</p> <p>23 says, in the email to you at the end of the</p> <p>24 second paragraph (as read):</p> <p>25 What I want to stop is Todd being</p>	<p>Page 254</p> <p>1 D. Berardo</p> <p>2 same one who has just tried to put her on a</p> <p>3 PIP, fire her, and forwarded you an email</p> <p>4 about [lost connection] somebody thinks</p> <p>5 warrants termination, and you can't even</p> <p>6 remember what she said to you a month ago in</p> <p>7 an email?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Wouldn't that be a concern if you</p> <p>11 were an employee?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: No, we're human.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Well, you say -- let's go to</p> <p>16 Exhibit 17. Your email on July 1st on page</p> <p>17 DEFS02585 says:</p> <p>18 Coming from an HR background, it's</p> <p>19 always been drilled in my head to get</p> <p>20 everything in writing.'</p> <p>21 A: Where are we? Sorry, where are we?</p> <p>22 Q: Exhibit 17, DEFS02585.</p> <p>23 A: 585. Okay.</p> <p>24 Q: And you see you said to Mary Piehler:</p> <p>25 Coming from an HR background, it has</p>

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<p>1 D. Berardo</p> <p>2 always been drilled in my head to get</p> <p>3 everything in writing.'</p> <p>4 Do you see that?</p> <p>5 A: Yes.</p> <p>6 Q: And Mary Piehler put it in writing,</p> <p>7 and it was forgotten or ignored --</p> <p>8 A: Mary --</p> <p>9 Q: -- by HR?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: That she didn't --</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: Right?</p> <p>14 A: That she didn't receive a performance</p> <p>15 review? I can't --</p> <p>16 Q: Her complaint was ignored or</p> <p>17 forgotten; right?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Even though she put it in writing?</p> <p>21 A: I can't say what happened after that</p> <p>22 email or if I had conversations with her. We</p> <p>23 had many conversations on the phone.</p> <p>24 Q: And what good did it do her to put it</p> <p>25 in writing to HR?</p>	<p>Page 257</p> <p>1 D. Berardo</p> <p>2 Q: Anything where you list it.</p> <p>3 A: We have gone through a number of</p> <p>4 scenarios.</p> <p>5 Q: You didn't lift -- tell me one right</p> <p>6 now where you lifted a finger to help Mary</p> <p>7 Piehler from being treated unfairly at</p> <p>8 Absolute.</p> <p>9 A: We did the --</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: We did a DOE -- DOE</p> <p>12 investigation.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: That was protecting her?</p> <p>15 A: It absolutely was, yes.</p> <p>16 Q: Or was she the one -- she -- wasn't</p> <p>17 she the target of the investigation?</p> <p>18 A: She was a subject -- she was one of</p> <p>19 the three subjects of the investigation, from</p> <p>20 what I recall.</p> <p>21 Q: So being a subject of an</p> <p>22 investigation is an example of you ensuring</p> <p>23 that she was treated fairly?</p> <p>24 A: Absolutely, it is.</p> <p>25 Q: And her being withheld commissions</p>
<p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: Are you asking me what</p> <p>4 she thought?</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: Yeah. What good did it do? It was</p> <p>7 forgotten in a month.</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Or ignored.</p> <p>11 A: Okay.</p> <p>12 Q: What good did it do for her to put it</p> <p>13 in writing?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: I -- I don't know -- I</p> <p>16 don't know how to answer that question.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: No. All right. Let's move on.</p> <p>19 What investigations did you do in HR</p> <p>20 to ensure that Mary Piehler was being treated</p> <p>21 fairly by the company?</p> <p>22 A: Are you talking about a specific</p> <p>23 incident?</p> <p>24 Q: Anything you have done.</p> <p>25 A: We have gone through --</p>	<p>Page 258</p> <p>1 D. Berardo</p> <p>2 during that investigation is an example of her</p> <p>3 being treated fairly?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: That's -- that wasn't</p> <p>6 my call, so I can't really answer that</p> <p>7 question.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: As an HR, though -- as an HR -- as</p> <p>10 head of HR, withholding someone's pay during</p> <p>11 an investigation, you think, is a way to</p> <p>12 ensure they're being treated fairly?</p> <p>13 A: We -- we didn't withhold pay; we</p> <p>14 withheld commissions while the investigation</p> <p>15 was underway, so --</p> <p>16 Q: What's the difference between --</p> <p>17 sorry. Go ahead.</p> <p>18 A: So I would think that that would be</p> <p>19 a -- that would be fair to do in this -- in</p> <p>20 that sort of circumstance.</p> <p>21 Q: What is the difference between pay</p> <p>22 and commissions?</p> <p>23 A: Pay can be defined as base pay --</p> <p>24 commissions, base pay, bonus. There's lots of</p> <p>25 variable different types of pay.</p>

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<p>1 D. Berardo</p> <p>2 Q: Any other -- any other examples of</p> <p>3 you in HR doing anything to protect Mary</p> <p>4 Piehler from being treated unfairly besides</p> <p>5 targeting her for an investigation?</p> <p>6 A: Well --</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: -- Mary and I spoke a</p> <p>9 number of different times in a number of</p> <p>10 different emails, and if she would have</p> <p>11 raised anything that may have been</p> <p>12 discriminatory, of course we would have</p> <p>13 investigated it even further.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: So you -- did you investigate</p> <p>16 anything ever?</p> <p>17 A: Not from a discriminatory point of</p> <p>18 view.</p> <p>19 Q: Okay.</p> <p>20 A: I would say --</p> <p>21 Q: Despite all the conversations with</p> <p>22 Mary Piehler, the emails we have seen, you</p> <p>23 never once investigated discrimination?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: That's correct. That</p>	<p>Page 261</p> <p>1 D. Berardo</p> <p>2 warning, sometimes a written warning, a</p> <p>3 performance improvement plan. Sometimes those</p> <p>4 steps are skipped, depending on the</p> <p>5 circumstances.</p> <p>6 If the person has -- if the manager feels</p> <p>7 that there's no hope in the person</p> <p>8 improving -- improving, we can move forward</p> <p>9 directly with terminations -- termination, at</p> <p>10 times. It's all going to be circumstantial,</p> <p>11 depending on the circumstances.</p> <p>12 Q: Let me show you Exhibit 57, if the</p> <p>13 court reporter can show that to you. If you</p> <p>14 could turn to DEFS268.</p> <p>15 MS. LESTRADE: I think you should</p> <p>16 read the whole document.</p> <p>17 THE WITNESS: Yeah, can I read the</p> <p>18 whole document? Just because I'm --</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Yeah, sure.</p> <p>21 A: Thank you.</p> <p>22 Q: Have you -- let me ask you this:</p> <p>23 Have you seen the document before?</p> <p>24 A: I -- we did -- I did see this when we</p> <p>25 were preparing.</p>	<p>Page 263</p>
<p>1 D. Berardo</p> <p>2 was never raised. Or -- and that was never</p> <p>3 apparent in any of the -- any of the</p> <p>4 documents or any of the complaints that</p> <p>5 were ever forwarded.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Anything else that you did to protect</p> <p>8 her from being treated unfairly?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: Not that I recall.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Before an employee is terminated for</p> <p>13 poor performance, what steps should an</p> <p>14 employer go through with that employee --</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: -- from a human resources</p> <p>18 perspective?</p> <p>19 A: I can speak in general.</p> <p>20 Q: Well, let's -- okay. Go ahead.</p> <p>21 A: Sure. So it -- it's -- it would</p> <p>22 depend -- so if it's for performance, it would</p> <p>23 depend if -- if the person can actually make a</p> <p>24 turnaround. If the person can make a</p> <p>25 turnaround, they generally will have a verbal</p>	<p>Page 262</p> <p>1 D. Berardo</p> <p>2 Q: If you need to read it again, feel</p> <p>3 free.</p> <p>4 A: Thank you. Okay.</p> <p>5 Q: Do you see 2.3.2 on page DEFS268?</p> <p>6 A: Yeah.</p> <p>7 Q: And were those -- was that the policy</p> <p>8 that was in effect at Absolute when</p> <p>9 Ms. Piehler was terminated?</p> <p>10 A: I can't say for certain if this is</p> <p>11 the policy that was in effect. It changed</p> <p>12 from time to time.</p> <p>13 MR. THOMAS: We would request the</p> <p>14 updated copy.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: I will represent to you, though,</p> <p>17 Mr. Berardo, that this is the copy that was</p> <p>18 produced to --</p> <p>19 A: Sure.</p> <p>20 Q: -- us by Absolute.</p> <p>21 A: Okay. So just under the assumption,</p> <p>22 this would be the policy -- if this was the</p> <p>23 policy that was in force when she was</p> <p>24 terminated. Okay.</p> <p>25 Q: And does it mention anywhere about</p>	<p>Page 264</p>

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<p>1 D. Berardo</p> <p>2 the fact that steps can be skipped if a</p> <p>3 manager wants to skip them?</p> <p>4 A: Well, from -- from reading it, so</p> <p>5 this policy is only for -- is only for</p> <p>6 enforcement of policy and other rules. So</p> <p>7 this is not necessarily performance-related.</p> <p>8 So it's not something we would follow for a --</p> <p>9 like, a performance-related conversation. And</p> <p>10 it does say, in 2.1:</p> <p>11 Infringements range from minor to</p> <p>12 very serious, ultimately extending to</p> <p>13 criminal acts; and therefore, the actions</p> <p>14 required by managers and HR may vary in</p> <p>15 sensitivity.'</p> <p>16 Under 2.3 --</p> <p>17 Q: So it's your testimony that Mary</p> <p>18 Piehler was not fired for violating any</p> <p>19 company policy; correct?</p> <p>20 A: That's correct, from my recollection.</p> <p>21 Q: Was there anything that she violated</p> <p>22 that Absolute expected from -- from her as a</p> <p>23 policy matter as an employee?</p> <p>24 A: Not that I recall.</p> <p>25 Q: Okay. And there's nothing about, in</p>	Page 265	<p>1 D. Berardo</p> <p>2 MR. SULLIVAN: Objection to form.</p> <p>3 THE WITNESS: What -- so, sorry,</p> <p>4 which -- can you -- can you repeat the</p> <p>5 question? I'm sorry.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Sure. What -- what -- was the</p> <p>8 company -- in terms of the reason for</p> <p>9 Ms. Piehler's termination, what steps prior to</p> <p>10 her termination were supposed to go -- were</p> <p>11 supposed to occur before -- before she was --</p> <p>12 strike -- strike that.</p> <p>13 At Absolute when you were there,</p> <p>14 when Ms. Piehler was terminated --</p> <p>15 A: Yeah.</p> <p>16 Q: -- what steps was Absolute supposed</p> <p>17 to go through before terminating her?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: From my recollection,</p> <p>20 we weren't really required to follow any</p> <p>21 specific steps.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: You didn't look at giving Ms. Piehler</p> <p>24 a verbal warning?</p> <p>25 A: Not under the circumstances, no.</p>	Page 267
<p>1 D. Berardo</p> <p>2 2.3.2 about skipping steps because of a</p> <p>3 manager; correct?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: Yeah, sure, under</p> <p>6 number 2, 'preparation':</p> <p>7 Consideration of the disciplinary</p> <p>8 measure should consider the following</p> <p>9 options.'</p> <p>10 So I would refer back to the word 'consider.'</p> <p>11 So it doesn't lay out the steps, all four</p> <p>12 steps. It just says 'consider,' so...</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: In Ms. Piehler's case, were these</p> <p>15 steps considered?</p> <p>16 A: I wouldn't -- this doesn't apply to</p> <p>17 Ms. Piehler's case, so those steps --</p> <p>18 Q: My question was -- to you was were</p> <p>19 these steps considered in Ms. Piehler's case?</p> <p>20 A: No -- no, they weren't, because they</p> <p>21 don't apply to her.</p> <p>22 Q: Why did they not -- what -- what</p> <p>23 steps -- the steps -- what steps did apply to</p> <p>24 her in terms of what was expected in terms of</p> <p>25 interaction between her and the company?</p>	Page 266	<p>1 D. Berardo</p> <p>2 A: written warning?</p> <p>3 A: No.</p> <p>4 Q: You didn't consider putting her on a</p> <p>5 PIP?</p> <p>6 A: Before she was terminated?</p> <p>7 Q: Yeah.</p> <p>8 A: No.</p> <p>9 Q: Yeah, that's right. Because I want</p> <p>10 to differentiate that from the one that</p> <p>11 Mr. Awtry attempted.</p> <p>12 A: Right.</p> <p>13 Q: So you just jumped straight from</p> <p>14 ground -- from zero to termination without</p> <p>15 going through any of those steps?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: We --</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: Or even looking at them.</p> <p>20 MR. THOMAS: Objection to form.</p> <p>21 THE WITNESS: Well, these steps don't</p> <p>22 apply to -- in -- in --</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: I'm not asking you that. I'm asking</p> <p>25 you did you think about any of those steps</p>	Page 268

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<p>1 D. Berardo  2 with Ms. Piehler?  3 A: Well, no, because they don't apply.  4 Q: Let me try again. Did you think  5 about the steps of a verbal warning to  6 Ms. Piehler?  7 A: No, because it didn't apply.  8 Q: Did you apply -- did you think about  9 any written warning?  10 A: No, because it didn't apply.  11 Q: Did you think about giving her a PIP?  12 A: No, because it didn't apply.  13 Q: Did you think about suspending her?  14 A: No, because it didn't apply.  15 Q: And do you think that's an  16 appropriate way to treat an employee, is to  17 terminate them without giving them a verbal  18 warning?  19 A: Under the --  20 MR. SULLIVAN: Objection to form.  21 THE WITNESS: Under the  22 circumstances, yes.  23 BY MR. THOMAS:  24 Q: Why?  25 A: Because the -- from my perspective,</p>	Page 269	<p>1 D. Berardo  2 know, opportunity to talk about what sort of  3 personal growth they want to take in their  4 career, and, you know, to -- to highlight  5 things that employees -- the employee would be  6 doing well and things the employee, you know,  7 could improve on.  8 Q: And to give an employee an  9 opportunity to improve on that before being  10 fired; right?  11 MR. SULLIVAN: Objection to form.  12 THE WITNESS: I -- I don't know if  13 that's the -- if -- if that's the reason of  14 a performance review.  15 BY MR. THOMAS:  16 Q: You don't -- you don't think one of  17 the purposes of a performance review is to  18 give an employee an opportunity to improve  19 their performance so they won't get fired?  20 A: I mean, I think that would be taking  21 it to the extreme. If the person was being  22 fired -- it -- it's not designed for that. An  23 annual performance --  24 Q: Or -- or to tell an employee where  25 they should improve their performance so the</p>	Page 271
<p>1 D. Berardo  2 the -- the -- between Todd and Mary, their  3 working relationship was -- was a difficult  4 one, and so Todd was not able to work with  5 Mary effectively.  6 Q: Anything else?  7 A: I mean, no.  8 Q: Okay. Let's go to -- let's talk  9 about performance reviews at Absolute. Did  10 Absolute give performance reviews?  11 A: Yes.  12 Q: Was that a function that was carried  13 out through the HR -- in part through the HR  14 department?  15 A: It was administered -- administered  16 through the HR department, yes.  17 Q: What is the purpose of performance  18 reviews?  19 A: To review performance.  20 Q: For? What purpose?  21 A: Well, for -- for feedback, for...  22 Q: Feedback to the -- feedback to the  23 employee; correct?  24 A: Correct. Feedback to the employee  25 for the employee to -- to -- to have some, you</p>	Page 270	<p>1 D. Berardo  2 company won't be in a position where they  3 think they need to fire the employee; right?  4 A: Well, sure, that would be accurate,  5 that -- that a performance review is -- is  6 there to provide that feedback to help the  7 employee with their performance, yes.  8 MR. THOMAS: Okay. If the court  9 reporter can show the witness Kenny  10 Exhibit 34.  11 BY MR. THOMAS:  12 Q: Once you've had a chance to read  13 that, let me know.  14 MS. LESTRADE: What number?  15 MR. SULLIVAN: 34.  16 BY MR. THOMAS:  17 Q: Mr. Berardo, you saw this exhibit on  18 Monday, didn't you?  19 A: I didn't -- not from my recollection,  20 I didn't.  21 Q: Okay.  22 A: Okay. You can go ahead.  23 Q: Okay. First of all, this document  24 says -- at the top right, it says 'performed  25 on.' What does 'performed on' mean at</p>	Page 272

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<p>1 D. Berardo</p> <p>2 Absolute in performance reviews in that</p> <p>3 location? The top right-hand corner of the</p> <p>4 first page.</p> <p>5 A: Yeah. I'm -- I'm -- I'm only</p> <p>6 speculating because I don't recall</p> <p>7 specifically, but it -- it's likely when the</p> <p>8 review was -- was submitted. But, again, I</p> <p>9 would be speculating.</p> <p>10 Q: Now, is there anything in Exhibit --</p> <p>11 is Exhibit 34 the last performance evaluation</p> <p>12 Ms. Piehler ever received?</p> <p>13 A: I -- I don't know. I don't know the</p> <p>14 answer to that question.</p> <p>15 Q: When was Ms. Piehler fired?</p> <p>16 A: Was it July of twenty -- 2015?</p> <p>17 Q: So can you -- how -- let me ask you</p> <p>18 this: How far in advance was this performance</p> <p>19 review prior to her termination?</p> <p>20 A: Well, this was for the previous -- or</p> <p>21 the last six months of 2014, and it was</p> <p>22 completed on -- in February, so it was --</p> <p>23 Q: How far was that from when she was</p> <p>24 terminated?</p> <p>25 A: It was about five months.</p>	<p>Page 273</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Okay. And, in fact, to the contrary,</p> <p>4 if you go to -- is there anything in here that</p> <p>5 indicates that she's unsupportive of</p> <p>6 management decisions?</p> <p>7 A: Well, I mean, her responses -- I</p> <p>8 mean, her responses are -- are -- you know,</p> <p>9 her -- her responses are -- are -- you know,</p> <p>10 they -- they tend to be reasons or -- or</p> <p>11 excuses versus accepting the feedback.</p> <p>12 Q: My question to you was is there</p> <p>13 anything in here -- in here that indicates she</p> <p>14 was unsupportive of the management decisions?</p> <p>15 A: Well, I -- I mean, that kind of</p> <p>16 implies that you're unsupportive, if you're</p> <p>17 not taking the feedback.</p> <p>18 Q: Where -- where does -- where does she</p> <p>19 not take the feedback?</p> <p>20 A: Well, I can only -- I mean, it's just</p> <p>21 from -- from writing. I mean, there's nothing</p> <p>22 explicit here, if that's what you're asking.</p> <p>23 She doesn't say anything like --</p> <p>24 Q: Anything -- what -- I'm asking you</p> <p>25 what you're referring to.</p>
<p>1 D. Berardo</p> <p>2 Q: Okay. Is there anything in</p> <p>3 Exhibit 34 which is consistent with an</p> <p>4 employee who is about to be terminated in four</p> <p>5 months?</p> <p>6 A: For --</p> <p>7 MR. SULLIVAN: Objection -- objection</p> <p>8 to form.</p> <p>9 THE WITNESS: For performance?</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: For any reason.</p> <p>12 A: Well, for performance, I would say --</p> <p>13 I would say there's nothing out -- that stands</p> <p>14 out here.</p> <p>15 Q: That would indicate the employee was</p> <p>16 about to be terminated?</p> <p>17 A: Underperforming, yeah.</p> <p>18 Q: Or was there anything in here that</p> <p>19 highlighted -- let me ask you this: Is there</p> <p>20 anything in here that indicates that Todd</p> <p>21 Awtry found Ms. Piehler difficult to work</p> <p>22 with?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 MR. THOMAS: Hey, John.</p> <p>25 THE WITNESS: Not that I read.</p>	<p>Page 274</p> <p>1 D. Berardo</p> <p>2 A: Okay.</p> <p>3 Q: How about this: Why don't we go to</p> <p>4 DEFS10579. And the question is:</p> <p>5 Does she approach the business with a</p> <p>6 can-do attitude that supports the business</p> <p>7 initiatives?</p> <p>8 Do you see that?</p> <p>9 A: I do, yes.</p> <p>10 Q: And what is she rated?</p> <p>11 A: She's rated a 3 out of 5.</p> <p>12 Q: Which is a -- verbally, a what?</p> <p>13 A: I -- I don't recall. I think it --</p> <p>14 it --</p> <p>15 Q: That means 'meets expectations,'</p> <p>16 isn't it?</p> <p>17 A: I think that's what it is. I think</p> <p>18 it's 'meet expectations.'</p> <p>19 Q: Well, can you see it right there?</p> <p>20 A: Can -- can I see what?</p> <p>21 Q: Your evaluation result meets</p> <p>22 expectations?</p> <p>23 A: Oh, yes. Sorry. Yes. 'Meets</p> <p>24 expectations.'</p> <p>25 Q: Why don't -- and why don't you read</p>

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<p>1 D. Berardo</p> <p>2 aloud the reviewer comment on this.</p> <p>3 A: Reviewer comments?</p> <p>4 You are absolutely --'</p> <p>5 Q: Yeah.</p> <p>6 A: You are absolutely a</p> <p>7 roll-your-shelves-up kind of person. Would</p> <p>8 ask to look at challenges inside ABT as</p> <p>9 'how do we get it done?' versus 'it's</p> <p>10 broken.' While I agree much is broken, the</p> <p>11 exception is leadership will figure out a</p> <p>12 way.'</p> <p>13 Q: Okay. What about -- how about</p> <p>14 'ensuring the team is deriving a strong</p> <p>15 relationship with all OEMs and their patch,'</p> <p>16 Exhibit 10577?</p> <p>17 A: Okay.</p> <p>18 Q: What was she rated there?</p> <p>19 A: She was rated 4 out of 5 or 'exceeds</p> <p>20 expectations.'</p> <p>21 Q: And that's 'exceeds expectations,'</p> <p>22 you said?</p> <p>23 A: Correct.</p> <p>24 Q: I won't keep going through it.</p> <p>25 A: Okay.</p>	<p>Page 277</p> <p>1 D. Berardo</p> <p>2 he did with Warren Young?</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: Yeah. Does he provide a written</p> <p>5 warning?</p> <p>6 A: It appears that he provided a written</p> <p>7 warning, yes.</p> <p>8 Q: Did he do that for Ms. Piehler?</p> <p>9 A: Sorry?</p> <p>10 Q: Did he do that for Ms. Piehler?</p> <p>11 A: Around her performance?</p> <p>12 Q: Yeah.</p> <p>13 A: Her termination wasn't based on</p> <p>14 performance.</p> <p>15 Q: What was it based on?</p> <p>16 A: I have already answered that</p> <p>17 question.</p> <p>18 Q: What did you say?</p> <p>19 THE WITNESS: Can you repeat what I</p> <p>20 said.</p> <p>21 THE COURT REPORTER: I'll need the</p> <p>22 words to find it.</p> <p>23 THE WITNESS: Oh, the words to --</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: You need -- you need to say it again.</p>
<p>1 D. Berardo</p> <p>2 Q: But let me also take a look at</p> <p>3 Exhibit 59. I'm sorry. Wait. Awtry</p> <p>4 Exhibit 58.</p> <p>5 If you could, Court Reporter, just</p> <p>6 show that to the...</p> <p>7 THE WITNESS: Thanks.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Let me know when you have had a</p> <p>10 chance to read Exhibit 58.</p> <p>11 A: Okay.</p> <p>12 Q: Now, the issues that Mr. Awtry is</p> <p>13 raising regarding Mr. Young are also not</p> <p>14 related to policy, are they?</p> <p>15 A: No, they're -- it -- it appears that</p> <p>16 they're performance.</p> <p>17 Q: And what does he do -- first of all,</p> <p>18 is Mr. Young a male or a female?</p> <p>19 A: He's a male.</p> <p>20 Q: What does Mr. Awtry do in terms of</p> <p>21 his male subordinates when there's an issue</p> <p>22 about their performance?</p> <p>23 A: Are --</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: Are you asking me what</p>	<p>Page 278</p> <p>1 D. Berardo</p> <p>2 A: Okay.</p> <p>3 Q: She was fired based on what? Not</p> <p>4 policy.</p> <p>5 A: No.</p> <p>6 Q: Not performance. What, then?</p> <p>7 A: It -- she was -- she was terminated</p> <p>8 based on her -- from what I recall, from my</p> <p>9 recollection, it was her and Todd's</p> <p>10 difficult -- difficult -- difficult working</p> <p>11 relationship. Like, they --</p> <p>12 Q: Which was not a performance issue by</p> <p>13 her; correct?</p> <p>14 A: Which is not a -- was not a measure</p> <p>15 of her numbers or her --</p> <p>16 Q: It was -- it wasn't also a measure of</p> <p>17 her complying with policy at Absolute, was it?</p> <p>18 A: No, this didn't have anything to do</p> <p>19 with policy. Not that I recall. I -- I</p> <p>20 haven't read the entire policy manual.</p> <p>21 Q: If you read Exhibit 58 and</p> <p>22 Exhibit 34, who would you think is more likely</p> <p>23 to get terminated in the next five months?</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: I -- I under -- I under</p>

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<p>1 D. Berardo</p> <p>2 -- based on performance?</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: No, just who is more likely to get</p> <p>5 terminated --</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: -- based on your experience in HR</p> <p>9 and --</p> <p>10 A: I -- I would never make that call</p> <p>11 without knowing more facts based on two emails</p> <p>12 -- or two documents. I would never make that</p> <p>13 call.</p> <p>14 Q: Based on those two, though, who would</p> <p>15 be in more trouble?</p> <p>16 A: I would never -- I would never make</p> <p>17 that call.</p> <p>18 Q: When a manager says to you 'you</p> <p>19 mentioned to me in one of our previous</p> <p>20 conversations, not Friday,' that:</p> <p>21 I know I'm running out of time, and</p> <p>22 if I continue to miss my quota, you won't</p> <p>23 have to manage me out of the business,</p> <p>24 which leads me to believe you understand</p> <p>25 the urgency to correct performance</p>	<p>Page 281</p> <p>1 D. Berardo</p> <p>2 this, Mr. Berardo.</p> <p>3 A: Okay.</p> <p>4 Q: Let's just get to the point.</p> <p>5 A: Sure.</p> <p>6 Q: She was never given a warning like</p> <p>7 that; right?</p> <p>8 A: She was never given a warning about</p> <p>9 her performance, no.</p> <p>10 Q: Or given a warning in any sense that</p> <p>11 she was about to be terminated?</p> <p>12 A: warning that she was -- a heads-up</p> <p>13 that she was going to be terminated? Not that</p> <p>14 -- not -- my recollection is that she was not</p> <p>15 given a heads-up that she was going to be</p> <p>16 terminated.</p> <p>17 Q: Or a warning that if she continued to</p> <p>18 engage in certain behaviour, she was likely to</p> <p>19 be terminated?</p> <p>20 A: I -- I can only speak for myself and</p> <p>21 my knowledge, and my knowledge --</p> <p>22 Q: Do you have any knowledge that she</p> <p>23 was given any warning that her employment was</p> <p>24 in jeopardy?</p> <p>25 A: Not my -- not to my recollection.</p>	<p>Page 283</p>
<p>1 D. Berardo</p> <p>2 immediately.'</p> <p>3 Do you see that? In Exhibit 58.</p> <p>4 A: Yeah. And what line is that?</p> <p>5 Q: The second-to-last.</p> <p>6 A: Second-to-last line?</p> <p>7 Q: Exhibit 58.</p> <p>8 A: Oh, the last page? The first --</p> <p>9 Q: First -- first page.</p> <p>10 A: Oh, the first page, the last line?</p> <p>11 Or the...</p> <p>12 Q: Second-to-last line.</p> <p>13 A: Oh, right. Okay.</p> <p>14 Q: Second-to-last paragraph.</p> <p>15 A: Okay.</p> <p>16 Q: Do you see that?</p> <p>17 A: I do.</p> <p>18 Q: Mary Piehler never got a warning like</p> <p>19 that, did she?</p> <p>20 A: Well, this was -- this was a</p> <p>21 performance -- this was a performance issue,</p> <p>22 so Mary never got a performance-based warning</p> <p>23 because there was no big performance numbers</p> <p>24 or quota that --</p> <p>25 Q: Let's not go round and round about</p>	<p>Page 282</p>	<p>Page 284</p> <p>1 D. Berardo</p> <p>2 Q: But Mr. Young, the male employee,</p> <p>3 was?</p> <p>4 A: Based on his performance --</p> <p>5 Q: Correct?</p> <p>6 A: -- yes. Yeah.</p> <p>7 Q: And, in fact, Mr. Young wasn't even</p> <p>8 fired; he was kept on with the same pay after</p> <p>9 this. Does that surprise you?</p> <p>10 A: I don't recall the --</p> <p>11 MR. SULLIVAN: Objection --</p> <p>12 THE WITNESS: -- circumstances.</p> <p>13 MR. SULLIVAN: -- to form.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Okay. Tell me about the open</p> <p>16 door-policy at Absolute.</p> <p>17 MR. SULLIVAN: Objection to form.</p> <p>18 THE WITNESS: I mean, the open-door</p> <p>19 policy was that, you know, if -- if anyone</p> <p>20 had an issue or a complaint, they could</p> <p>21 come to anyone on the leadership team.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: And would they be fired for any</p> <p>24 issues they raised?</p> <p>25 A: Any --</p>

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<p>1 D. Berardo</p> <p>2 Q: Under the open-door policy?</p> <p>3 A: Any issues that they raised?</p> <p>4 Q: Yeah.</p> <p>5 A: Would they be fired because of it? I mean --</p> <p>6 Q: Yeah.</p> <p>7 A: -- I can't -- I can't speculate what someone would come and -- and tell us. If they were telling us they were doing something illegal, yeah, they could get fired.</p> <p>8 Q: But in terms of their comments about how the company could be run better or differently, that wouldn't -- and -- and they came forward under the open-door policy, they weren't going to risk termination for doing that, were they?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: I -- I can't say that they were or weren't. You know, if --</p> <p>11 if --</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: So it's possible someone could -- so you're saying that under the open-door policy, someone could come to their manager, express</p>	<p>Page 285</p> <p>1 D. Berardo</p> <p>2 A: Okay. Okay.</p> <p>3 Q: Now that you have read that, could you -- would you say that that email was degrading to Todd Awtry?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 THE WITNESS: Degrading to Todd Awtry?</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: Yeah. What Mary Piehler said, was she being degrading to Todd Awtry?</p> <p>8 A: It was very contradictory to what Todd was trying to tell her.</p> <p>9 Q: My question to you was is Mary Piehler being degrading to Todd Awtry in that email?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: I mean, that's -- in my opinion?</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: As an HR person at Absolute, yes, do you consider this to be degrading treatment from one employee to another?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: I don't know if I --</p>
<p>1 D. Berardo</p> <p>2 thoughts about how the company could be run better, and they could be fired for it?</p> <p>3 MR. THOMAS: Objection to form.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: That was the open-door policy at Absolute?</p> <p>6 A: I wouldn't say that's the open-door policy, but, I mean, it -- it would depend on circumstances.</p> <p>7 Q: Did you say that it is the open-door policy, what I --</p> <p>8 A: No.</p> <p>9 Q: -- just described?</p> <p>10 A: I said that wouldn't be the open-door policy --</p> <p>11 Q: Okay.</p> <p>12 A: -- but it would depend on circumstances.</p> <p>13 MR. THOMAS: If you -- if the court reporter could show the witness Exhibit 24.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Once you have finished -- once you've had a chance to read it, let me know.</p>	<p>Page 286</p> <p>1 D. Berardo</p> <p>2 wouldn't use the word 'degrading.'</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: Would you use the term 'berating'?</p> <p>5 A: Sorry?</p> <p>6 Q: Berating, b-e-r-a-t-i-n-g. Berating.</p> <p>7 Would you say Mary Piehler was berating Todd Awtry in this email?</p> <p>8 MR. THOMAS: Objection to form.</p> <p>9 THE WITNESS: Can -- can you -- can you define 'berating' to me.</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: What does -- what does 'berating' mean to you?</p> <p>12 A: I guess someone that is -- you know, some -- someone that is -- that is not showing respect.</p> <p>13 Q: You think Mary Piehler is not showing respect to Todd in this email?</p> <p>14 A: Yeah, I think there's -- there's points where she's not.</p> <p>15 Q: Do you think Todd is showing respect to Mary in this email?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: From reading it, I</p>

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<p>1 D. Berardo  2 mean, it seems like Todd is trying to  3 provide her some of the -- some feedback.  4 BY MR. THOMAS:  5 Q: What do you think of Mary's comments  6 about what Todd was saying to her? Do you  7 think that was appropriate?  8 MR. SULLIVAN: Objection to form.  9 THE WITNESS: Can you point me to --  10 to -- to the paragraph you're speaking of.  11 BY MR. THOMAS:  12 Q: Well, we can just start with in the  13 first italicized thing:  14 Criticizing me and my 'leadership' in  15 front of one of my peers is not really the  16 right thing to do. You even commented that  17 you were going to 'get personal' before you  18 started to criticize me? Obviously, I can  19 sense you're annoyed and frustrated, but I  20 was being honest, and my reps will back up  21 everything that I told you. There is no  22 hidden agenda here. I was clear,  23 transparent, and doing what I still believe  24 was the right thing, telling my manager the  25 concerns of my team. I don't see this as</p>	Page 289	Page 291
<p>1 D. Berardo  2 bad leadership at all.'  3 A: Okay. And so, sorry, what was the --  4 what was the original question?  5 Q: Do you think that it was appropriate  6 for Todd Awtry to say to an employee that he's  7 about to get personal with her?  8 MR. SULLIVAN: Objection to form.  9 BY MR. THOMAS:  10 Q: And do so in front of her peers?  11 A: If -- I mean, if that is what he --  12 if that is what he said, to 'get personal,'  13 I'm not sure what he meant by that.  14 Q: Is there ways that that would be  15 okay?  16 A: Is there a way to -- that that would  17 be okay?  18 Q: For a manager to speak to a  19 subordinate with a -- in front of a peer?  20 MR. SULLIVAN: Objection to form.  21 THE WITNESS: If that's what he said,  22 if he actually said 'I'm going to get  23 personal,' I probably would coach him to --  24 I would ask what is he trying to say and  25 coach him to use other language besides</p>	Page 290	Page 292

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<p>1 D. Berardo</p> <p>2 you know right now, from Exhibit 24?</p> <p>3 A: If you can show me the policy, I can</p> <p>4 answer that question.</p> <p>5 Q: No, I'm saying -- I'm asking you</p> <p>6 based on your knowledge.</p> <p>7 A: Based on my knowledge of the</p> <p>8 open-door policy, I mean, my vague knowledge</p> <p>9 of what the open-door policy was I don't think</p> <p>10 got into specifics of what you can and can't</p> <p>11 do. So I can't answer that question.</p> <p>12 Q: Do you think Exhibit 24 warranted an</p> <p>13 employee's termination? And, specifically,</p> <p>14 Mary Piehler's?</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: If we're -- if -- are</p> <p>17 we talking about a single document? If --</p> <p>18 if I was presented --</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: Yes.</p> <p>21 A: -- a single document?</p> <p>22 Q: Yes.</p> <p>23 A: You know, it -- it would essentially</p> <p>24 be up to the manager, and we would have that</p> <p>25 conversation. It's hard for me to answer</p>	Page 293	Page 295
<p>1 D. Berardo</p> <p>2 that, because it's -- it's not just a single</p> <p>3 email.</p> <p>4 Q: Well, what did -- what emails did you</p> <p>5 look at in -- did -- were you -- let me ask</p> <p>6 you this: Were you involved in the decision</p> <p>7 to terminate Ms. Piehler?</p> <p>8 A: The decision came from -- the</p> <p>9 decision came from Todd to terminate --</p> <p>10 Q: Did you --</p> <p>11 A: -- Mary.</p> <p>12 Q: Did you do anything besides observe</p> <p>13 and report it?</p> <p>14 A: I --</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: I had conversations --</p> <p>17 we definitely had conversations with Todd.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: When did you have those</p> <p>20 conversations?</p> <p>21 A: Before -- I mean, before the decision</p> <p>22 was made.</p> <p>23 Q: Did you question whether</p> <p>24 discrimination might be an issue?</p> <p>25 A: No, because I've never observed any</p>	Page 294	Page 296

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<p>1 D. Berardo</p> <p>2 THE WITNESS: That happens, yes.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: Should it --</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: -- from an HR perspective? When?</p> <p>8 A: In circumstances. Just when it's a sensitive termination.</p> <p>9</p> <p>10 Q: Why shouldn't Recruiting be told?</p> <p>11 A: Because you want to keep -- you want to keep sensitive information as tight as possible and not tell -- only tell people that it -- that's -- that would be absolutely necessary to know.</p> <p>12 Q: Where did you first learn that Mary Piehler was going to be -- was under consideration for termination?</p> <p>13 A: I don't recall the specific date.</p> <p>14 It -- it was -- it could have been a month, month and a half, couple of months before she was actually terminated. I -- but my -- I don't -- I don't know the specific dates, so I wouldn't hold to that -- that date.</p> <p>15 Q: What is a position number at</p>	<p>Page 297</p> <p>1 D. Berardo</p> <p>2 A: I mean, generally, this was, again, managed by finance, so I'm -- I'm not the expert when it comes to position numbers. So it would probably be someone in finance that would be able to answer that definite -- more definitively.</p> <p>3 Q: When somebody left and a new person took their role, they would be given the same position number?</p> <p>4 A: When someone left and a new --</p> <p>5 Q: As the person -- as the person who left?</p> <p>6 A: It -- it's a possibility. Or -- so, usually, that -- yeah, usually, the position number would stay around, unless the position was eliminated. And someone would -- would take that position number, in general, I think.</p> <p>7 Q: What if the position was changed?</p> <p>8 Would a new position number be created?</p> <p>9 A: I don't know the answer to that. I'm not sure. It's a finance question.</p> <p>10 MR. THOMAS: If you could show, Jessica, the witness Exhibit 81.</p>	<p>Page 299</p>
<p>1 D. Berardo</p> <p>2 Absolute?</p> <p>3 A: A position number is something that was controlled by finance. And so every position had a number, and then an employee was assigned to that number. And so an employee could leave, and their employee number could leave with them, but the position number would stay with that position. So the -- there could be multiple employees in that same position number over the course of the years.</p> <p>4 Q: Did each employee have a separate position number?</p> <p>5 A: They should have, yes. At -- at -- we -- I should say that we implemented position numbers at a certain point. They weren't always at Absolute, and I don't know when they were actually -- they were actually implemented.</p> <p>6 Q: But once you had a position number -- once you had implemented position numbers, only one employee had a position number; correct? Or each employee had a unique position number; right?</p>	<p>Page 298</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: Thanks.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: And, Mr. Berardo, I would like you to read that exhibit and let me know when you're done.</p> <p>5 Jessica, just to save some time, from the new exhibits, Berardo new exhibits, if you could pull O, P, I, J, and N. And you can mark those. Those will be coming for the witness next.</p> <p>6 MS. LESTRADE: Did we lose her?</p> <p>7 MR. MANINDER: That might have been Mary falling off.</p> <p>8 MR. THOMAS: Mary, are you still there?</p> <p>9 MS. LESTRADE: I think she may have fallen off.</p> <p>10 MR. THOMAS: Oh, okay. Want to just loop her back in there? Or did she -- did she call in?</p> <p>11 MS. LESTRADE: No, we can call her, but -- yeah, hold on.</p> <p>12 MR. THOMAS: Okay.</p> <p>13 MS. LESTRADE: I will try to get her</p>	<p>Page 300</p>

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<p>1 D. Berardo      2 back.      3 THE COURT REPORTER: Let's go off the      4 record.      5 MS. LESTRADE: Okay.      6 THE WITNESS: Can we take a      7 two-minute break, then.      8 MS. LESTRADE: Sure, yeah.      9 VIDEOGRAPHER: Going off record. The      10 time is 6:18.      11 (PROCEEDINGS RECESSED AT 6:18 P.M.)      12 (PROCEEDINGS RECONVENED AT 6:27?P.M.)      13 VIDEOGRAPHER: Back on the record.      14 The time is 6:27.      15 BY MR. THOMAS:      16 Q: All right. Mr. Berardo, does      17 Exhibit 81 accurately describe the termination      18 meeting with Ms. Piehler?      19 A: Yeah, from my recollection, it does.      20 Q: Did you consider the exit interview      21 to be bizarre?      22 A: The -- the request for the -- the      23 exit interview?      24 Q: No, sorry, the termination meeting.      25 Did you consider the termination meeting to be</p>	Page 301	<p>1 D. Berardo      2 MR. THOMAS: Yes. Can the court      3 reporter read it back.      4 (REPORTER READ BACK)      5 THE WITNESS: Yes, it was appropriate      6 for that to be discussed while that third      7 party was in the room.      8 BY MR. THOMAS:      9 Q: Why was Tom loebe hiding and not      10 present?      11 A: I don't -- I don't know. I don't      12 know that he was even hiding.      13 Q: Why wasn't he -- why wasn't he      14 present in the room?      15 A: Well, we had the -- that      16 representative in the room, Catherine.      17 Q: And let's go through here. Where was      18 -- where was Tom in relation to the meeting?      19 A: I -- I don't know. I don't have any      20 recollection of Tom.      21 Q: Well, he's listed as being present in      22 the room. Do you see that?      23 A: Yes.      24 Q: How come Mary Piehler couldn't see      25 him?</p>	Page 303
<p>1 D. Berardo      2 bizarre?      3 A: No.      4 Q: Did you consider Mary's reaction at      5 the termination meeting to be bizarre?      6 A: No.      7 Q: Why was a third party present for the      8 meeting?      9 A: Because I couldn't be there in      10 person, and so it's a best practice to have      11 another person in the room.      12 Q: Was it appropriate for Ms. Piehler's      13 severance, financial, and benefits to be      14 discussed with a third party?      15 MR. SULLIVAN: Objection to form.      16 THE WITNESS: It's -- it's -- it's      17 common -- it's common -- if someone is      18 witnessing a termination, it's common      19 practice for them to be in the room during      20 that termination meeting. The full      21 termination meeting.      22 BY MR. THOMAS:      23 Q: Without going around and around, is      24 that a yes or a no?      25 A: Can you repeat the question.</p>	Page 302	<p>1 D. Berardo      2 A: I mean, he must -- he must have      3 been present. Because at -- the bottom      4 sentence says:      5 Tom indicated he would follow up with      6 Mary, since he knows her personally.'      7 Maybe --      8 Q: Why -- why wasn't he -- where was --      9 was he hiding somewhere in the room?      10 A: Perhaps he was on the phone. I -- I      11 don't -- I don't recall.      12 Q: Well, you said he had to be present      13 in the room.      14 A: Sorry, present? I -- I was not      15 present in the room, and it marks me as      16 present. So he could have been on the phone.      17 I -- I don't know.      18 Q: But you're marked -- you're marked as      19 being on the phone.      20 A: Okay. I don't -- I don't know.      21 Q: Is there any good explanation as to      22 why someone would hide in the middle of a      23 termination meeting?      24 MR. SULLIVAN: Objection to form.      25 THE WITNESS: Why someone would hide</p>	Page 304

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<p>1 D. Berardo</p> <p>2 in a termination meeting? Is this a</p> <p>3 hypothetical question?</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: Well, Tom Ioele was present for the</p> <p>6 termination meeting but was hiding somewhere</p> <p>7 where he couldn't be seen by Ms. Piehler. Is</p> <p>8 there any good reason for that?</p> <p>9 A: I don't think that's --</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: I don't think that's an</p> <p>12 accurate statement.</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Which part of it is not accurate?</p> <p>15 A: That he was hiding in the room.</p> <p>16 Q: Well, why couldn't he -- okay. If --</p> <p>17 if you're in a conference room in a hotel and</p> <p>18 three people are present -- four, including</p> <p>19 Ms. Piehler -- why couldn't Mr. Ioele be seen?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: I mean, I think that's</p> <p>22 a question for Catherine and Tom. I -- I</p> <p>23 wasn't in the room, so --</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: Not you as head of HR?</p>	<p>Page 305</p> <p>1 D. Berardo</p> <p>2 Q: Did you know that Ms. Piehler's</p> <p>3 husband had cancer?</p> <p>4 A: I'm -- I'm not sure if I knew before</p> <p>5 the termination. I definitely knew after the</p> <p>6 termination when speaking with Mary.</p> <p>7 Q: And didn't Absolute promise that they</p> <p>8 were going to continue Ms. Piehler's health</p> <p>9 benefits?</p> <p>10 A: I don't recall Absolute making</p> <p>11 that -- that promise. Generally, in the -- in</p> <p>12 the -- in the severance, it's part of a</p> <p>13 severance to -- I just don't -- I can't speak</p> <p>14 to it. I don't -- I don't have the</p> <p>15 termination letter in front of me. I don't</p> <p>16 know what was offered or what wasn't.</p> <p>17 Q: Did you talk to Ms. Piehler about her</p> <p>18 medical coverage? Because you cancelled it on</p> <p>19 them and Mr. Piehler when he was going in for</p> <p>20 cancer surgery?</p> <p>21 A: I'm -- we may have spoken. Mary and</p> <p>22 I spoke quite a bit on the phone after the</p> <p>23 termination. I don't --</p> <p>24 Q: Did it include the fact that you had</p> <p>25 cancelled the health insurance on her husband</p>
<p>1 D. Berardo</p> <p>2 A: I wasn't in the room, so I didn't</p> <p>3 observe who was in -- who was actually in the</p> <p>4 room, unfortunately.</p> <p>5 Q: It wouldn't be appropriate for him</p> <p>6 to -- for someone to not make themselves known</p> <p>7 and hide in a room during a termination</p> <p>8 meeting, would it?</p> <p>9 MR. SULLIVAN: Objection to form.</p> <p>10 THE WITNESS: If -- if you're</p> <p>11 speaking in a general sense, yes, it would</p> <p>12 not be appropriate for someone to hide in a</p> <p>13 room during a termination --</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: What about in --</p> <p>16 A: -- meeting.</p> <p>17 Q: -- in Mary Piehler's case? Would it</p> <p>18 be appropriate there?</p> <p>19 A: If he was hiding?</p> <p>20 Q: Or not visible.</p> <p>21 A: If he was hiding and he didn't make</p> <p>22 himself present to Mary?</p> <p>23 Q: Correct.</p> <p>24 A: I imagine that would be</p> <p>25 inappropriate, yes.</p>	<p>Page 306</p> <p>1 D. Berardo</p> <p>2 who had cancer, despite promising not to do</p> <p>3 so?</p> <p>4 A: So --</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: Yeah, the way the</p> <p>7 insurance works in the US is -- is</p> <p>8 insurance is not cancelled. Someone can go</p> <p>9 on COBRA and can continue that coverage</p> <p>10 once -- once the payment has stopped from</p> <p>11 the company.</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: My question to you is didn't you</p> <p>14 cancel Ms. Piehler's insurance immediately</p> <p>15 upon her exit meeting, even though you had</p> <p>16 told her it was not being cancelled?</p> <p>17 MR. SULLIVAN: Objection to form.</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: And the only way she found out was</p> <p>20 when her husband went in for cancer treatment,</p> <p>21 and there was no medical coverage?</p> <p>22 A: No, I wouldn't say that's accurate.</p> <p>23 We would have gone through this with her in</p> <p>24 the termination letter, and it would have been</p> <p>25 laid out in the termination letter.</p>

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<p>1 D. Berardo</p> <p>2 Q: You're not saying -- so you're</p> <p>3 denying that you all cancelled the insurance</p> <p>4 on Mary Piehler and her husband who had</p> <p>5 cancer?</p> <p>6 A: I -- I'm not denying the fact that</p> <p>7 the company stopped paying for coverage and</p> <p>8 she was referred to COBRA. What I'm saying is</p> <p>9 that -- is that that was all laid out in</p> <p>10 the -- in the -- in the severance package, and</p> <p>11 that would have been -- gone -- we would have</p> <p>12 gone over that during that termination</p> <p>13 meeting.</p> <p>14 Q: Now, how much -- how do you determine</p> <p>15 how much severance an employee is to receive</p> <p>16 when they are terminated?</p> <p>17 A: Typically, it's a -- it's a question</p> <p>18 that -- that we have with our legal counsel,</p> <p>19 and so it -- it will depend on -- on the</p> <p>20 circumstance, and then that -- that will be</p> <p>21 discussed with the legal counsel to come up</p> <p>22 with a recommendation, depending on the</p> <p>23 circumstances. And location.</p> <p>24 Q: Do you ever offer severance to an</p> <p>25 employee who resigns voluntarily?</p>	<p>Page 309</p> <p>1 D. Berardo</p> <p>2 Exhibits -- what has been marked as</p> <p>3 Exhibits 87 through 91. Let me know when you</p> <p>4 have had a chance to read those.</p> <p>5 (Exhibit 87 was marked for</p> <p>6 identification and is attached hereto.)</p> <p>7 (Exhibit 88 was marked for</p> <p>8 identification and is attached hereto.)</p> <p>9 (Exhibit 89 was marked for</p> <p>10 identification and is attached hereto.)</p> <p>11 (Exhibit 90 was marked for</p> <p>12 identification and is attached hereto.)</p> <p>13 (Exhibit 91 was marked for</p> <p>14 identification and is attached hereto.)</p> <p>15 MR. THOMAS: And, Jessica, if you can</p> <p>16 mark Berardo Exhibit A as 92.</p> <p>17 (Exhibit 92 was marked for</p> <p>18 identification and is attached hereto.)</p> <p>19 MR. THOMAS: And, Jessica, one more</p> <p>20 exhibit. Berardo Exhibit X as 93.</p> <p>21 (Exhibit 93 was marked for</p> <p>22 identification and is attached hereto.)</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: All right. These -- these documents,</p>
<p>1 D. Berardo</p> <p>2 A: Resigns voluntarily? It can happen.</p> <p>3 Q: Do you know why Amy Rathbun was</p> <p>4 offered such a large severance package, even</p> <p>5 though she resigned voluntarily?</p> <p>6 A: I wasn't around for Amy's</p> <p>7 resignation. I don't know the details.</p> <p>8 Q: What would be the circumstances under</p> <p>9 which a person would be offered a large</p> <p>10 severance package when they left voluntarily?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: So you're -- you're --</p> <p>13 you're just asking me in general</p> <p>14 hypothetically?</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: No, at HR -- at Absolute when you</p> <p>17 were in HR.</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: I don't recall -- I</p> <p>20 don't recall us offering a severance</p> <p>21 package to someone that resigned</p> <p>22 voluntarily. My recollection -- I don't</p> <p>23 recall that.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: All right. Let me show you</p>	<p>Page 310</p> <p>1 D. Berardo</p> <p>2 some of which are redacted, involve</p> <p>3 discussions with legal and other people</p> <p>4 regarding Ms. Piehler's termination.</p> <p>5 Do you -- how far in advance of</p> <p>6 consulting legal do you remember discussing</p> <p>7 Ms. Piehler's termination?</p> <p>8 A: With Todd?</p> <p>9 Q: With anyone.</p> <p>10 A: I don't -- I don't recall</p> <p>11 specifically the -- the timeline of -- of who</p> <p>12 I talked to about, you know, her termination</p> <p>13 before we spoke with legal.</p> <p>14 Q: How -- how long -- how soon after the</p> <p>15 idea of her being terminated did you contact</p> <p>16 legal?</p> <p>17 A: It -- it -- I don't -- I don't know</p> <p>18 the answer to that. It -- it would have been</p> <p>19 fairly quickly, I would imagine.</p> <p>20 Q: And 'fairly quickly' meaning a week</p> <p>21 or two?</p> <p>22 A: I don't -- I don't know. I -- I</p> <p>23 don't have specific times.</p> <p>24 Q: Well, you used the words 'fairly'</p> <p>25 quickly,' so I'm asking what you mean by --</p>

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<p>1 D. Berardo</p> <p>2 A: Yeah.</p> <p>3 Q: -- 'fairly quickly.'</p> <p>4 A: It could be -- it could be a day; it</p> <p>5 could be a couple of weeks.</p> <p>6 Q: Okay.</p> <p>7 A: I don't know.</p> <p>8 Q: Do you wish you had known about</p> <p>9 Thomas Kenny's comment when you made -- when</p> <p>10 the termination decision was made?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: Do I -- do I wish?</p> <p>13 BY MR. THOMAS:</p> <p>14 Q: Would you like -- let me put it this</p> <p>15 way: Would you like to have known about it?</p> <p>16 MR. SULLIVAN: Objection to form.</p> <p>17 THE WITNESS: Well, as I said before,</p> <p>18 I would have liked to have known about it</p> <p>19 when -- when it happened, yes.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: Would you have liked to have known</p> <p>22 about it in terms of how you would have</p> <p>23 approached the termination decision?</p> <p>24 A: No.</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p>Page 313</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: -- but I guess he</p> <p>3 can't hear us, so...</p> <p>4 MS. LESTRADE: I don't think we -- I</p> <p>5 don't think we --</p> <p>6 MS. VAN BRUNT-PIEHLER: Yes.</p> <p>7 MS. LESTRADE: -- need to.</p> <p>8 MS. VAN BRUNT-PIEHLER: I'm still on.</p> <p>9 MR. SULLIVAN: Okay.</p> <p>10 MS. LESTRADE: Oh.</p> <p>11 MR. SULLIVAN: We lost Nelson. We'll</p> <p>12 patch him back in.</p> <p>13 MS. VAN BRUNT-PIEHLER: Okay.</p> <p>14 MR. SULLIVAN: He -- he's got to call</p> <p>15 us, because it's just going to go to his...</p> <p>16 MR. MALLI: Unless he gives us the</p> <p>17 number again.</p> <p>18 MS. LESTRADE: Let's see. Maybe they</p> <p>19 will fix it and get their act together on</p> <p>20 their end.</p> <p>21 MR. SULLIVAN: He's got to call us.</p> <p>22 MS. LESTRADE: Ms. Piehler, are you</p> <p>23 still on the line?</p> <p>24 MR. SULLIVAN: Hit the resume.</p> <p>25 Resume.</p>
<p>1 D. Berardo</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: What could you have done better in</p> <p>5 dealing with Mary Piehler at Absolute, from an</p> <p>6 HR perspective?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: You know, I believe --</p> <p>9 oh.</p> <p>10 MR. SULLIVAN: Keep going.</p> <p>11 MS. LESTRADE: Just keep going.</p> <p>12 THE WITNESS: Okay. Yeah, I believe</p> <p>13 that -- that -- that I did everything that</p> <p>14 I felt was appropriate at the time in -- in</p> <p>15 -- in dealing with Mary.</p> <p>16 Oh, he -- he can't hear us either.</p> <p>17 MR. SULLIVAN: Is Mary still on?</p> <p>18 THE COURT REPORTER: Okay.</p> <p>19 VIDEOGRAPHER: Should we --</p> <p>20 MS. LESTRADE: Hello?</p> <p>21 VIDEOGRAPHER: -- go off record,</p> <p>22 counsel? Should we go off?</p> <p>23 MR. SULLIVAN: It's his -- it's his</p> <p>24 deposition --</p> <p>25 MS. LESTRADE: It's his deposition.</p>	<p>Page 314</p> <p>1 D. Berardo</p> <p>2 MS. LESTRADE: Resume?</p> <p>3 MR. SULLIVAN: Yeah. Okay.</p> <p>4 MS. LESTRADE: Hello? Is there</p> <p>5 anyone on the line?</p> <p>6 MS. VAN BRUNT-PIEHLER: Mary is on.</p> <p>7 MS. LESTRADE: Okay.</p> <p>8 MR. SULLIVAN: Okay.</p> <p>9 MS. LESTRADE: We're going to have to</p> <p>10 end the call with you because their --</p> <p>11 MS. VAN BRUNT-PIEHLER: Okay.</p> <p>12 MS. LESTRADE: -- phone isn't</p> <p>13 working.</p> <p>14 MR. SULLIVAN: We'll -- we'll connect</p> <p>15 back in when they call here, so --</p> <p>16 MS. VAN BRUNT-PIEHLER: Okay. No</p> <p>17 problem.</p> <p>18 MR. SULLIVAN: -- stand -- stand by.</p> <p>19 MS. LESTRADE: Okay.</p> <p>20 MR. MALLI: Do you want me to hang</p> <p>21 up?</p> <p>22 MR. SULLIVAN: Yeah.</p> <p>23 MS. LESTRADE: Yes.</p> <p>24 MR. SULLIVAN: Hang up, and we'll</p> <p>25 call you back.</p>

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<p>1 D. Berardo</p> <p>2 MS. LESTRADE: Okay.</p> <p>3 MS. VAN BRUNT-PIEHLER: Okay.</p> <p>4 MS. LESTRADE: Bye.</p> <p>5 Is he going to call? Does he know to</p> <p>6 call, do you think?</p> <p>7 MR. SULLIVAN: What does that say?</p> <p>8 MS. LESTRADE: 'We're going to take</p> <p>9 ours off 'night' so you can call.'</p> <p>10 MR. SULLIVAN: Okay. All right.</p> <p>11 MS. LESTRADE: Okay. So --</p> <p>12 MR. SULLIVAN: Let's try again.</p> <p>13 MS. LESTRADE: -- now?</p> <p>14 UNIDENTIFIED SPEAKER: Thank you for</p> <p>15 calling Thomas &amp; Solomon. This is Kyle.</p> <p>16 How can I help you?</p> <p>17 MS. LESTRADE: Hi, we're in the</p> <p>18 middle of a deposition with Nelson Thomas.</p> <p>19 THE WITNESS: Okay. One moment,</p> <p>20 please.</p> <p>21 MS. LESTRADE: We need get him on the</p> <p>22 line.</p> <p>23 MR. THOMAS: Hey. Do we have you</p> <p>24 back?</p> <p>25 MR. SULLIVAN: Yeah. We'll patch in</p>	<p>Page 317</p> <p>1 D. Berardo</p> <p>2 VIDEOGRAPHER: No.</p> <p>3 MR. SULLIVAN: Okay. We're back on.</p> <p>4 Well, we're on.</p> <p>5 MR. THOMAS: All right. And then can</p> <p>6 the court reporter read back the last</p> <p>7 question and the answer until it stopped.</p> <p>8 (REPORTER READ BACK)</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: From where you sit today, would you</p> <p>11 have done anything differently?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: I -- I wouldn't, no.</p> <p>14 MR. THOMAS: All right. And can the</p> <p>15 court reporter show the witness what has</p> <p>16 been marked as Exhibit 92.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: Is this the severance package that</p> <p>19 you said would explain to Ms. Piehler when her</p> <p>20 medical benefits would end?</p> <p>21 A: I believe so, yes.</p> <p>22 Q: And tell me what you told her when</p> <p>23 they would end.</p> <p>24 A: Well, I -- I would have went through</p> <p>25 this -- I mean, I -- I don't remember the --</p>	
<p>1 D. Berardo</p> <p>2 Mary.</p> <p>3 MR. THOMAS: Okay. Perfect.</p> <p>4 Thank you.</p> <p>5 MS. VAN BRUNT-PIEHLER: Hello, Mary</p> <p>6 Piehler.</p> <p>7 MR. SULLIVAN: Hi. Hold on. We're</p> <p>8 going to get Nelson on.</p> <p>9 MS. VAN BRUNT-PIEHLER: Okay. Sure.</p> <p>10 MS. LESTRADE: Everyone on?</p> <p>11 MR. THOMAS: I'm here.</p> <p>12 MS. LESTRADE: Ms. Piehler?</p> <p>13 MS. VAN BRUNT-PIEHLER: I'm here.</p> <p>14 MS. LESTRADE: Okay.</p> <p>15 MR. SULLIVAN: Okay.</p> <p>16 MR. THOMAS: Okay.</p> <p>17 MS. VAN BRUNT-PIEHLER: I'm here.</p> <p>18 MR. SULLIVAN: Yeah.</p> <p>19 MS. LESTRADE: Okay.</p> <p>20 MR. SULLIVAN: We're good.</p> <p>21 MR. THOMAS: Great. Can we go back</p> <p>22 on the -- I don't -- did we go off the</p> <p>23 record or --</p> <p>24 MR. SULLIVAN: Yes. Yes. No?</p> <p>25 THE COURT REPORTER: No.</p>	<p>Page 318</p> <p>1 D. Berardo</p> <p>2 Q: Well, go through it -- go through it</p> <p>3 and tell me when it says they're going to end.</p> <p>4 A: Sure. So it says (as read):</p> <p>5 Benefits: Your group extended health</p> <p>6 and dental benefits will cease at the end</p> <p>7 of the month on the -- July 31st, 2015.</p> <p>8 You have the election under COBRA</p> <p>9 legislation to continue your group health,</p> <p>10 vision care, and dental plan by paying the</p> <p>11 premiums. You will receive a notification</p> <p>12 from our COBRA administrative, COBRA help.'</p> <p>13 Q: You may need to read just a little</p> <p>14 slower for the court reporter there.</p> <p>15 THE WITNESS: Sorry. Do you...</p> <p>16 THE COURT REPORTER: That's okay. I</p> <p>17 got it.</p> <p>18 THE WITNESS: Okay.</p> <p>19 To be eligible, you must respond to</p> <p>20 the notice by August 30th, 2015.'</p> <p>21 And then it goes on about life insurance.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Isn't it -- isn't it true that cut</p> <p>24 Mary Piehler's health insurance off before</p> <p>25 July 31st?</p>	<p>Page 320</p>

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<p>1 D. Berardo</p> <p>2 A: Not -- not that I recall, unless it</p> <p>3 was an administrative error.</p> <p>4 Q: Okay. Do you remember that she</p> <p>5 called you because her husband was going in</p> <p>6 for cancer treatment, and he didn't have</p> <p>7 health coverage because Absolute had cut his</p> <p>8 benefits off?</p> <p>9 A: I don't recall that conversation,</p> <p>10 but, you know, I'm not saying that it -- that</p> <p>11 that didn't happen. I just don't recall it.</p> <p>12 Q: You do recall many conversations with</p> <p>13 Mary Piehler after her termination about her</p> <p>14 health benefits; right?</p> <p>15 A: Her health benefits -- benefits</p> <p>16 specifically?</p> <p>17 Q: Yes.</p> <p>18 A: I mean, I just -- I just don't -- I</p> <p>19 don't recall the specifics of -- of health</p> <p>20 benefit questions or conversations.</p> <p>21 Q: Or benefits generally? Do you</p> <p>22 remember a number of calls with Mary Piehler</p> <p>23 about benefits generally?</p> <p>24 A: Sorry, what -- can you repeat the</p> <p>25 question.</p>	<p>Page 321</p> <p>1 D. Berardo</p> <p>2 I would, yes.</p> <p>3 BY MR. THOMAS:</p> <p>4 Q: Even something like being responsible</p> <p>5 for cutting off somebody's medical coverage</p> <p>6 for their husband who has cancer?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: That would sort of slip by?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: I -- I -- I don't know</p> <p>12 what you're asking me. If you can repeat</p> <p>13 the question.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: Yeah. Are you -- are you the type of</p> <p>16 person who would forget the fact that your HR</p> <p>17 department cut off health benefits for an</p> <p>18 employee who you fired and whose husband was</p> <p>19 relying on them for his cancer treatments?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: Are you asking me five</p> <p>22 -- four years later if I would remember</p> <p>23 that?</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: Yeah.</p>	<p>Page 323</p>
<p>1 D. Berardo</p> <p>2 Q: Yes. I believe you testified earlier</p> <p>3 that you remember a number of calls with</p> <p>4 Ms. Piehler after her termination about her</p> <p>5 benefits.</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: Correct?</p> <p>9 A: I don't -- I don't know if I said</p> <p>10 that. There was a number of calls with Mary</p> <p>11 Piehler after when we were trying to negotiate</p> <p>12 a settlement.</p> <p>13 Q: And you don't remember the fact that</p> <p>14 you had cut off her husband's health insurance</p> <p>15 who had cancer?</p> <p>16 A: I don't recall. If -- if that did</p> <p>17 happen, it -- it would have been an</p> <p>18 administrative error and been rectified</p> <p>19 immediately.</p> <p>20 Q: You seem to -- do you have -- do you</p> <p>21 have difficulty recalling conversations with</p> <p>22 people?</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 THE WITNESS: Yes, five years ago in</p> <p>25 the past, I would. Five years in the past,</p>	<p>Page 322</p> <p>1 D. Berardo</p> <p>2 A: It's possible that I wouldn't, four</p> <p>3 years after the fact.</p> <p>4 Q: Let's go to Exhibit 93. When you've</p> <p>5 had a chance to read it, let me know.</p> <p>6 A: Sure. Ready.</p> <p>7 Q: Okay. Why did you say that you</p> <p>8 normally don't do exit interviews for this</p> <p>9 type of circumstance?</p> <p>10 A: We don't do exit -- we -- we never do</p> <p>11 exit interviews for terminations that are</p> <p>12 initiated by the employer.</p> <p>13 Q: Why don't you -- why -- why wouldn't</p> <p>14 you do those?</p> <p>15 A: Most companies don't, from -- from my</p> <p>16 understanding, best practice, is because the</p> <p>17 purpose of the exit interviews is to gather</p> <p>18 information to, you know, help improve the --</p> <p>19 you know, it could be the culture or -- or</p> <p>20 whatever it might be of the company.</p> <p>21 Generally, terminated employees don't provide</p> <p>22 constructive -- constructive information,</p> <p>23 and -- and, generally, we -- we really want to</p> <p>24 understand the reasons why people are leaving.</p> <p>25 That's the main purpose of the exit interview.</p>	<p>Page 324</p>

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<p>1 D. Berardo</p> <p>2 And in this circumstance -- that just</p> <p>3 wasn't the circumstance in this.</p> <p>4 Q: If someone was fired for</p> <p>5 discriminatory reasons, wouldn't you want to</p> <p>6 get their input on that --</p> <p>7 MR. SULLIVAN: Objection --</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: -- in their exit interview?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: In this circumstance,</p> <p>12 she wasn't terminated for discriminatory</p> <p>13 reasons.</p> <p>14 BY MR. THOMAS:</p> <p>15 Q: I'm not -- I'm just asking you, as an</p> <p>16 HR manager at Absolute, wouldn't you want to</p> <p>17 know that from an employee, if they thought</p> <p>18 they were fired for discriminatory reasons?</p> <p>19 A: So if I --</p> <p>20 MR. SULLIVAN: Objection -- objection</p> <p>21 to form.</p> <p>22 THE WITNESS: If, hypothetically,</p> <p>23 someone was terminated because of</p> <p>24 discriminatory reasons, would we want to</p> <p>25 know about that?</p>	<p>Page 325</p> <p>1 D. Berardo</p> <p>2 MR. SULLIVAN: -- ten-minute break or</p> <p>3 so.</p> <p>4 MS. LESTRADE: More than that.</p> <p>5 MR. SULLIVAN: Okay.</p> <p>6 MR. THOMAS: Okay.</p> <p>7 VIDEOGRAPHER: Going off the record.</p> <p>8 MS. LESTRADE: Yeah.</p> <p>9 VIDEOGRAPHER: The time is 6:55.</p> <p>10 (PROCEEDINGS RECESSED AT 6:55P.M.)</p> <p>11 (PROCEEDINGS RECONVENED AT 7:14 P.M.)</p> <p>12 VIDEOGRAPHER: Back on the record.</p> <p>13 The time is 7:14.</p> <p>14 EXAMINATION BY</p> <p>15 MS. LESTRADE:</p> <p>16 Q: Good evening, Mr. Berardo. As you</p> <p>17 know, my name is Laura Lestrade. I represent</p> <p>18 the defendants in this action, and I'm going</p> <p>19 to be asking you some questions. The same</p> <p>20 rules apply; if you need to take a break, just</p> <p>21 let me know, and we'll try to accommodate</p> <p>22 that. Just I --</p> <p>23 MR. THOMAS: Laura, can you speak up</p> <p>24 just a little bit. Because I'm having a</p> <p>25 little trouble hearing you.</p>
<p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: Yes.</p> <p>4 A: Yes -- yes, we would.</p> <p>5 Q: And if they felt they were</p> <p>6 discriminated for discriminatory reasons,</p> <p>7 wouldn't you want to know that too?</p> <p>8 MR. SULLIVAN: Objection to form.</p> <p>9 THE WITNESS: Yes, we would want to</p> <p>10 know that. At least, I would want to know</p> <p>11 that.</p> <p>12 BY MR. THOMAS:</p> <p>13 Q: Did you ever ask that of Ms. Piehler?</p> <p>14 MR. SULLIVAN: Objection to form.</p> <p>15 THE WITNESS: No, it's not a -- not a</p> <p>16 question that -- that we generally ask.</p> <p>17 BY MR. THOMAS:</p> <p>18 Q: All right. I have -- let me just</p> <p>19 take a quick look here. All right. I have</p> <p>20 nothing further at this time.</p> <p>21 MR. SULLIVAN: Take a break?</p> <p>22 MS. LESTRADE: Yeah.</p> <p>23 MR. SULLIVAN: All right. We're</p> <p>24 going to take a --</p> <p>25 MS. LESTRADE: Probably just --</p>	<p>Page 326</p> <p>1 D. Berardo</p> <p>2 BY MS. LESTRADE: Sure.</p> <p>3 Q: I just ask that you -- you -- we</p> <p>4 don't take a break while there is a question</p> <p>5 pending.</p> <p>6 I would like you to turn to</p> <p>7 Exhibit 67. You reviewed this document in</p> <p>8 detail earlier today. You could --</p> <p>9 A: Yes.</p> <p>10 Q: -- review it a little further, if you</p> <p>11 want to just refresh yourself.</p> <p>12 A: I recall the document.</p> <p>13 Q: Okay. Does this survey provide you</p> <p>14 with any reason to believe that Todd Awtry or</p> <p>15 Thomas Kenny discriminated against Mary</p> <p>16 Piehler?</p> <p>17 A: Absolutely --</p> <p>18 MR. THOMAS: Objection.</p> <p>19 THE WITNESS: Absolutely not.</p> <p>20 BY MS. LESTRADE:</p> <p>21 Q: Does anything in this survey provide</p> <p>22 you with any reason to believe that Thomas</p> <p>23 Kenny or Todd Awtry discriminated against</p> <p>24 older employees?</p> <p>25 A: Absolutely not.</p>

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<p>1 D. Berardo</p> <p>2 MR. THOMAS: Objection.</p> <p>3 BY MS. LESTRADE:</p> <p>4 Q: Did this survey provide you with any reason to believe that Todd Awtry or Thomas Kenny discriminated against older employees?</p> <p>5 MR. THOMAS: Objection.</p> <p>6 THE WITNESS: Absolutely not.</p> <p>7 BY MS. LESTRADE:</p> <p>8 Q: Did this survey provide you with any reason to believe that Todd Awtry or Thomas Kenny treated women differently in terms of communicating company strategies or initiatives?</p> <p>9 A: Absolutely not.</p> <p>10 MR. THOMAS: Objection.</p> <p>11 THE WITNESS: Absolutely not.</p> <p>12 BY MS. LESTRADE:</p> <p>13 Q: Did this survey provide you with any reason to believe that Todd Awtry or Thomas Kenny treated older people differently in terms of communicating company strategies or initiatives?</p> <p>14 MR. THOMAS: Objection.</p> <p>15 THE WITNESS: Absolutely not.</p>	<p>Page 329</p> <p>1 D. Berardo</p> <p>2 A: No.</p> <p>3 Q: Did any of Ms. Piehler's complaints give rise to a duty to investigate those complaints?</p> <p>4 A: No.</p> <p>5 MR. THOMAS: Objection.</p> <p>6 BY MS. LESTRADE:</p> <p>7 Q: Can I have you look at Exhibit 21 again. If you could turn to it in the book.</p> <p>8 A: Sure. Okay.</p> <p>9 Q: I'm going to direct your attention to the first paragraph. And the one, two, three, four -- fifth line down towards the end where it -- it says:</p> <p>10 We did not launch a corporate investigation in my CER, who I identified as having a part-time job during the day when Absolute is paying him to be here hunting business in the northeast. We continue to pay him at full value.'</p> <p>11 Are you familiar with that -- do you -- do you know what Ms. Piehler was referring to there?</p> <p>12 A: I remember a situation --</p> <p>13 MR. THOMAS: Objection.</p>
<p>1 D. Berardo</p> <p>2 BY MS. LESTRADE:</p> <p>3 Q: We discussed earlier that Ms. Piehler raised some concerns with you concerning -- about her treatment at Absolute. Did any of the concerns raised by Ms. Piehler involve sexual harassment?</p> <p>4 A: Never.</p> <p>5 MR. THOMAS: Objection.</p> <p>6 BY MS. LESTRADE:</p> <p>7 Q: Did any of the concerns raised by Ms. Piehler involve discrimination of any kind?</p> <p>8 A: Never.</p> <p>9 BY MS. LESTRADE:</p> <p>10 Q: Did any --</p> <p>11 MR. THOMAS: Objection.</p> <p>12 BY MS. LESTRADE:</p> <p>13 Q: -- of the concerns raised by Ms. Piehler involve crimes, criminal activity?</p> <p>14 A: Never.</p> <p>15 Q: Or fraud or --</p> <p>16 MR. THOMAS: Objection.</p> <p>17 BY MS. LESTRADE:</p> <p>18 Q: -- of the concerns raised by Ms. Piehler involve crimes, criminal activity?</p> <p>19 A: Never.</p> <p>20 Q: -- embezzlement?</p>	<p>Page 330</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: I remember a situation where an employee was away at lunchtime for a period of time, and it was determined that he was -- he was teaching a fitness class or something -- something -- something to that effect.</p> <p>3 BY MS. LESTRADE:</p> <p>4 Q: Was an inquiry done into this situation?</p> <p>5 A: I don't --</p> <p>6 MR. THOMAS: Objection.</p> <p>7 THE WITNESS: I don't recall the specifics of how -- how much we investigated. We definitely did investigate, and it was determined that he was essentially just leaving on his lunch hour.</p> <p>8 BY MS. LESTRADE:</p> <p>9 Q: M'mm-hmm.</p> <p>10 A: So nothing further was done. Because it was -- it -- it wasn't deemed as inappropriate.</p> <p>11 Q: And there was some testimony earlier about an allegation that Todd Awtry shared</p>

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<p>1 D. Berardo</p> <p>2 performance reviews of his reports with</p> <p>3 everyone on his team. Was it -- did he -- did</p> <p>4 he share the reviews themselves?</p> <p>5 A: No. From my recollection --</p> <p>6 MR. THOMAS: Objection.</p> <p>7 THE WITNESS: From my recollection,</p> <p>8 it was the -- it was the ratings on those</p> <p>9 reviews in -- in a spread -- spreadsheet</p> <p>10 that he had pasted in an email.</p> <p>11 BY MS. LESTRADE:</p> <p>12 Q: M'mm-hmm. Okay. I'm going to have</p> <p>13 you look at Exhibits 62, 63, 64, and 66.</p> <p>14 A: Starting with 62, sorry?</p> <p>15 Q: 62, 63, 64, and 66.</p> <p>16 A: Okay.</p> <p>17 Q: Just briefly, just if you could focus</p> <p>18 on the review periods for each review.</p> <p>19 A: Sure. Through -- sorry, through 64?</p> <p>20 Q: 62, 63, 64, and 66.</p> <p>21 A: And 66. Okay.</p> <p>22 Q: Did Todd Awtry prepare performance</p> <p>23 reviews for Mary Piehler for each evaluation</p> <p>24 period that he supervised her?</p> <p>25 A: So that --</p>	<p>Page 333</p> <p>1 D. Berardo</p> <p>2 this is -- he -- he copy and pasted the</p> <p>3 same 'I only had six months visibility to</p> <p>4 observe this competency' for all his direct</p> <p>5 reports during that review period.</p> <p>6 BY MS. LESTRADE:</p> <p>7 Q: And his direct reports during that</p> <p>8 review period, do you remember who they were?</p> <p>9 A: They would --</p> <p>10 MR. THOMAS: Objection.</p> <p>11 THE WITNESS: They would have been</p> <p>12 the regional directors. Specifically -- I</p> <p>13 don't remember specifically.</p> <p>14 BY MS. LESTRADE:</p> <p>15 Q: So it was all regional directors that</p> <p>16 reported to him at -- at that time?</p> <p>17 MR. THOMAS: Objection.</p> <p>18 THE WITNESS: In --</p> <p>19 MR. THOMAS: Objection.</p> <p>20 THE WITNESS: In North America, yeah.</p> <p>21 BY MS. LESTRADE:</p> <p>22 Q: M'mm-hmm. Regional directors and/or</p> <p>23 area vice presidents?</p> <p>24 A: Yes. Yeah. They were kind of one</p> <p>25 and the same. Some people were AVP; some</p>
<p>1 D. Berardo</p> <p>2 MR. THOMAS: Objection.</p> <p>3 THE WITNESS: Let me quickly review</p> <p>4 again.</p> <p>5 BY MS. LESTRADE:</p> <p>6 Q: M'mm-hmm.</p> <p>7 A: Yes, with the exception of the last</p> <p>8 six months, because the review period -- the</p> <p>9 review period hadn't started by the time Mary</p> <p>10 exited.</p> <p>11 Q: Okay. And if you look at</p> <p>12 Exhibit 62 --</p> <p>13 A: Okay.</p> <p>14 Q: -- if you look at the reviewer</p> <p>15 comments, most of the reviewer comments say:</p> <p>16 I only had six months visibility to</p> <p>17 observe the competency.'</p> <p>18 Is that correct?</p> <p>19 A: That's correct.</p> <p>20 Q: Are you aware whether Mr. Awtry gave</p> <p>21 that same review comment for his other reports</p> <p>22 during that time -- that time frame?</p> <p>23 A: Yeah, from -- from my recollection --</p> <p>24 MR. THOMAS: Objection.</p> <p>25 THE WITNESS: From my recollection,</p>	<p>Page 334</p> <p>1 D. Berardo</p> <p>2 people were regional directors. Yes.</p> <p>3 Q: When Mary Piehler complained about</p> <p>4 not having received a performance review, did</p> <p>5 it require an investigation by you?</p> <p>6 A: Not a formal --</p> <p>7 MR. THOMAS: Objection.</p> <p>8 THE WITNESS: Not a -- it wouldn't --</p> <p>9 it wouldn't set off a formal investigation,</p> <p>10 no.</p> <p>11 BY MS. LESTRADE:</p> <p>12 Q: Do you think Mary Piehler was treated</p> <p>13 unfairly by Absolute?</p> <p>14 A: I do --</p> <p>15 MR. THOMAS: Objection.</p> <p>16 THE WITNESS: I do not.</p> <p>17 BY MS. LESTRADE:</p> <p>18 Q: And in your -- as an -- as an HR</p> <p>19 director at Absolute during that time frame,</p> <p>20 do you believe -- would it be appropriate for</p> <p>21 an employee to be terminated for repeatedly</p> <p>22 disagreeing with her manager on business</p> <p>23 issues?</p> <p>24 MR. THOMAS: Objection.</p> <p>25 THE WITNESS: I -- I would say</p>

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<p>1 D. Berardo      2 that -- that would be a conversation I      3 would have with the manager, and -- and it      4 -- it would be a valid reason to terminate      5 someone, yes.      6 BY MS. LESTRADE:      7 Q: Can you turn to Exhibit 17, please.      8 And on the third page, which is DEFS02585, in      9 this email from you to Ms. Piehler,      10 Ms. Piehler states -- at three lines up from      11 this first full paragraph, she --      12 A: Yeah.      13 Q: -- says:      14 I am not attempting to overreact. I      15 am covering myself in case this witch-hunt      16 continues in FY15.'      17 Do you know what she -- did you understand      18 what she meant by 'this witch-hunt'?      19 MR. THOMAS: Objection.      20 THE WITNESS: I would only be      21 speculating what I -- what I thought back      22 then.      23 BY MS. LESTRADE:      24 Q: M'mm-hmm.      25 MR. THOMAS: Objection.</p>	<p>Page 337</p> <p>1 D. Berardo      2 discriminated against Mary Piehler on the      3 basis of age or sex?      4 MR. THOMAS: Objection.      5 THE WITNESS: Absolutely not.      6 BY MS. LESTRADE:      7 Q: Are you aware of any actions by      8 anyone at Absolute that cause you to think      9 that Absolute discriminated against Mary      10 Piehler on the basis of age or sex?      11 A: Not that I --      12 MR. THOMAS: Objection.      13 THE WITNESS: Yeah, not that I      14 recall, no.      15 BY MS. LESTRADE:      16 Q: As the head of HR, were you      17 responsible for the recruiting function?      18 A: Yeah, the recruiting function --      19 MR. THOMAS: I didn't hear -- sorry,      20 what was that? I didn't hear for the...      21 BY MS. LESTRADE:      22 Q: I said as -- as the head of HR, were      23 you responsible for the recruiting function?      24 MR. THOMAS: Objection.      25 THE WITNESS: Yes, the recruiting</p>
<p>1 D. Berardo      2 BY MS. LESTRADE:      3 Q: Well, let me -- did you consider the      4 investigation into the DOE commission payments      5 to be a witch-hunt?      6 A: Absolutely not, no.      7 MR. THOMAS: Objection.      8 BY MS. LESTRADE:      9 Q: Are you aware of any actions by Todd      10 Awtry that cause you to think that he      11 discriminated against Mary Piehler on the      12 basis of age or sex?      13 A: Absolutely --      14 MR. THOMAS: Objection.      15 THE WITNESS: Absolutely not.      16 BY MS. LESTRADE:      17 Q: Are you aware of any actions by      18 Thomas Kenny that cause you to think that he      19 discriminated against Mary Piehler on the      20 basis of age or sex?      21 MR. THOMAS: Objection.      22 THE WITNESS: Absolutely not.      23 BY MS. LESTRADE:      24 Q: Are you aware of any actions by Geoff      25 Haydon that cause you to think that he</p>	<p>Page 338</p> <p>1 D. Berardo      2 function rolled up to me. Reported in to      3 me. Yes.      4 BY MS. LESTRADE:      5 Q: Were you ever given any instruction      6 by anyone at Absolute that Absolute wanted to      7 focus on hiring younger or male employees?      8 A: Never.      9 Q: Did you ever give any such      10 instruction to --      11 MR. THOMAS: Objection.      12 BY MS. LESTRADE:      13 Q: -- your -- to the recruiters who      14 reported to you?      15 A: Absolutely not.      16 Q: Did --      17 MR. THOMAS: Objection.      18 BY MS. LESTRADE:      19 Q: Did you ever give any such      20 instruction to internal recruiters that      21 Absolute used in finding candidates for      22 employment?      23 A: Absolutely not.      24 MR. THOMAS: Objection.      25 BY MS. LESTRADE:</p>

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<p>1 D. Berardo</p> <p>2 Q: Was it Absolute's policy to hire</p> <p>3 younger and male employees?</p> <p>4 A: It was not.</p> <p>5 MR. THOMAS: Objection.</p> <p>6 BY MS. LESTRADE:</p> <p>7 Q: Yeah. Did you ever hear Geoff Haydon</p> <p>8 say that he wanted to get rid of older</p> <p>9 employees?</p> <p>10 A: Never.</p> <p>11 Q: Did you --</p> <p>12 MR. THOMAS: Objection.</p> <p>13 BY MS. LESTRADE:</p> <p>14 Q: Did you ever hear Geoff Haydon say</p> <p>15 that he wanted to get rid of female employees?</p> <p>16 A: Never.</p> <p>17 Q: Did you --</p> <p>18 MR. THOMAS: Objection.</p> <p>19 BY MS. LESTRADE:</p> <p>20 Q: -- ever hear Geoff Haydon say he</p> <p>21 wanted to hire male employees?</p> <p>22 A: Never.</p> <p>23 MR. THOMAS: Objection.</p> <p>24 BY MS. LESTRADE:</p> <p>25 Q: Did you ever hear Geoff say -- Haydon</p>	<p>Page 341</p> <p>1 D. Berardo</p> <p>2 was he looking to -- what kind of business was</p> <p>3 he looking to turn Absolute into?</p> <p>4 MR. THOMAS: Objection.</p> <p>5 THE WITNESS: So I -- I can just</p> <p>6 answer from an HR perspective --</p> <p>7 BY MS. LESTRADE:</p> <p>8 Q: M'mm-hmm.</p> <p>9 A: -- but -- but my observation is that,</p> <p>10 you know, he wanted to turn Absolute into a</p> <p>11 world-class organization and wanted -- wanted</p> <p>12 to expand our reach, our revenue, improve our</p> <p>13 products, and -- and -- you know, essentially,</p> <p>14 that's what I recall.</p> <p>15 Q: Okay. I would like you to take a</p> <p>16 look at -- again, at Exhibit 21. Actually,</p> <p>17 first, look at Exhibit 17.</p> <p>18 A: Okay.</p> <p>19 Q: In -- on the third page, 2585,</p> <p>20 Ms. Piehler is complaining to you about Todd</p> <p>21 Awtry; is that correct?</p> <p>22 A: Let me --</p> <p>23 MR. THOMAS: Objection.</p> <p>24 THE WITNESS: Let me just quickly --</p> <p>25 quickly read it again. Yeah, the subject</p>
<p>1 D. Berardo</p> <p>2 say he wanted to hire young employees?</p> <p>3 A: No. Never.</p> <p>4 MR. THOMAS: Objection.</p> <p>5 BY MS. LESTRADE:</p> <p>6 Q: Did Geoff Haydon express any hiring</p> <p>7 criteria for people he wanted to join</p> <p>8 Absolute?</p> <p>9 MR. THOMAS: Objection.</p> <p>10 THE WITNESS: Not to the -- not to</p> <p>11 the best of my recollection. The decisions</p> <p>12 were generally left in the hands of the</p> <p>13 hiring managers.</p> <p>14 BY MS. LESTRADE:</p> <p>15 Q: M'mm-hmm. Did Geoff Haydon have a</p> <p>16 vision for changing the business direction of</p> <p>17 the company?</p> <p>18 A: Yes.</p> <p>19 MR. THOMAS: Objection.</p> <p>20 THE WITNESS: Yes. That's -- I think</p> <p>21 that's why he came into the company.</p> <p>22 BY MS. LESTRADE:</p> <p>23 Q: M'mm-hmm.</p> <p>24 A: Yeah.</p> <p>25 Q: And what -- what kinds of business</p>	<p>Page 342</p> <p>1 D. Berardo</p> <p>2 was Todd Awtry.</p> <p>3 BY MS. LESTRADE:</p> <p>4 Q: Okay. And in the very first line of</p> <p>5 the last -- the -- the -- actually, it's the</p> <p>6 second-to-last paragraph. She says:</p> <p>7 I have seen published numbers that</p> <p>8 are wrong.'</p> <p>9 Do you see that?</p> <p>10 A: Yes, I do.</p> <p>11 Q: Okay. And -- and then on page 2584</p> <p>12 at the bottom, you say:</p> <p>13 Hi, Mary. Can you give me more</p> <p>14 colour into your second-to-last paragraph.'</p> <p>15 Do you see that?</p> <p>16 A: I do, yes.</p> <p>17 Q: Okay. And the second-to-last</p> <p>18 paragraph is on the preceding page where she</p> <p>19 talks about published numbers that are wrong?</p> <p>20 A: Right. Yeah.</p> <p>21 Q: Okay. So if you go back to</p> <p>22 Exhibit 21 --</p> <p>23 A: Okay.</p> <p>24 Q: -- the first line, she says:</p> <p>25 Daniel, in response to your request,</p>

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<p>1 D. Berardo</p> <p>2 here is a little colour in the comments I</p> <p>3 made to you.'</p> <p>4 And much of this email is Ms. Piehler</p> <p>5 forwarding to you email correspondence that</p> <p>6 she had with Dan Miller about the reporting of</p> <p>7 sales numbers. Is that correct?</p> <p>8 A: Yes.</p> <p>9 Q: Okay. Who was Dan Miller?</p> <p>10 MR. THOMAS: Objection.</p> <p>11 THE WITNESS: Dan Miller was a -- he</p> <p>12 worked in the sales ops team. I'm not sure</p> <p>13 what his position was, but he worked in the</p> <p>14 sales operations team.</p> <p>15 BY MS. LESTRADE:</p> <p>16 Q: And was he responsible for reporting</p> <p>17 the numbers?</p> <p>18 MR. THOMAS: Objection.</p> <p>19 THE WITNESS: I don't -- I don't</p> <p>20 recall if he was responsible for reporting</p> <p>21 the numbers, but he was responsible for --</p> <p>22 for -- for gathering the numbers. And --</p> <p>23 and, perhaps, yeah, reporting them to --</p> <p>24 you know, to, like, the finance team.</p> <p>25 BY MS. LESTRADE:</p>	<p>Page 345</p> <p>1 D. Berardo</p> <p>2 Tom came into the...'</p> <p>3 Where it says:</p> <p>4 Tom came into the room after Mary</p> <p>5 left the parking lot, and we debriefed what</p> <p>6 had taken place with Todd and Daniel?'</p> <p>7 Q: Yeah. Okay. Does that -- does that</p> <p>8 refresh your recollection -- recollection at</p> <p>9 all that Mr. loele was, in fact, not in the</p> <p>10 room during the termination meeting and was</p> <p>11 not, in fact, hiding in the room?</p> <p>12 MR. THOMAS: Objection.</p> <p>13 THE WITNESS: I don't -- I don't -- I</p> <p>14 don't recall the -- I don't recall vivid</p> <p>15 memories of the -- of the call. But, I</p> <p>16 mean, I -- when the -- this termination</p> <p>17 note was sent to me, I mean, I reviewed it,</p> <p>18 and -- and -- and I said that it was</p> <p>19 accurate. So -- so, you know, three</p> <p>20 years -- three and a half years ago me</p> <p>21 would have said that this is -- this is</p> <p>22 what happened.</p> <p>23 BY MS. LESTRADE:</p> <p>24 Q: Okay. I have no more questions.</p> <p>25 EXAMINATION BY</p>	
<p>1 D. Berardo</p> <p>2 Q: M'mm-hmm. Okay. Was Todd Awtry</p> <p>3 responsible for gathering the numbers for the</p> <p>4 finance team?</p> <p>5 A: He was not, no.</p> <p>6 MR. THOMAS: Objection.</p> <p>7 THE WITNESS: Not to the -- not to</p> <p>8 the best of my recollection.</p> <p>9 BY MS. LESTRADE:</p> <p>10 Q: Okay. Mr. Berardo, I would -- I</p> <p>11 would like you to look again at Exhibit 81.</p> <p>12 A: Okay.</p> <p>13 Q: On the second page.</p> <p>14 A: Okay.</p> <p>15 Q: There was some suggestion earlier</p> <p>16 that -- that a Tom loele may have been hiding</p> <p>17 in the conference room where the termination</p> <p>18 took place. Can you look at three lines from</p> <p>19 the bottom of that email.</p> <p>20 A: Three lines from the bottom?</p> <p>21 Q: I mean, not of the email.</p> <p>22 A: Oh.</p> <p>23 Q: Of the -- on the page that's</p> <p>24 DEFS07446.</p> <p>25 A: Right. So it says:</p>	<p>Page 346</p> <p>1 D. Berardo</p> <p>2 MR. THOMAS:</p> <p>3 Q: Mr. Berardo, where -- why wasn't</p> <p>4 Mr. loele in the room, like the notes say?</p> <p>5 A: Why wasn't?</p> <p>6 Q: Why wasn't he?</p> <p>7 A: Why wasn't he in the room? Well, we</p> <p>8 just -- from my recollection, we just asked</p> <p>9 one person from the -- from the company to be</p> <p>10 in the room. So I don't know why he wasn't in</p> <p>11 the room.</p> <p>12 Q: Why did you ask only one person?</p> <p>13 A: That's -- that was all that was</p> <p>14 really necessary.</p> <p>15 Q: Why was -- why was he necessary to be</p> <p>16 there at all, then?</p> <p>17 A: I -- I don't know. You -- you would</p> <p>18 have to ask Catherine. I -- I don't know</p> <p>19 why -- why Catherine brought him to -- to the</p> <p>20 meeting.</p> <p>21 Q: And you don't know why Catherine kept</p> <p>22 him out -- kept him outside of Mary's sight</p> <p>23 until after the meeting was over and then</p> <p>24 brought him in; right?</p> <p>25 A: I don't -- I don't recall why, no.</p>	<p>Page 348</p>

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<p>1 D. Berardo</p> <p>2 Q: And you don't know where he was</p> <p>3 situated so that Mary couldn't see him during</p> <p>4 the meeting; correct? Or before the meeting?</p> <p>5 A: Well, it says here:</p> <p>6 Tom came into the room after Mary</p> <p>7 left.'</p> <p>8 So according to these notes, Tom wasn't in the</p> <p>9 room. I don't know where he was situated</p> <p>10 before --</p> <p>11 Q: Do you know where he was?</p> <p>12 A: I don't, no.</p> <p>13 Q: And do you know why he was somewhere</p> <p>14 where Mary couldn't see him, apparently?</p> <p>15 A: He was outside the room, because he</p> <p>16 wasn't part of the termination meeting.</p> <p>17 Q: That wasn't my question.</p> <p>18 A: Sorry, can you repeat your question.</p> <p>19 MR. THOMAS: Yes. Could the court</p> <p>20 reporter read it back.</p> <p>21 (REPORTER READ BACK)</p> <p>22 THE WITNESS: I -- I don't know -- I</p> <p>23 don't know why he was outside the room.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: Nothing further.</p>	<p>Page 349</p> <p>1</p> <p>2 REPORTER CERTIFICATION</p> <p>3 I, Jessica D. Archibald, Official</p> <p>4 Reporter in the Province of British Columbia,</p> <p>5 Canada, BCSRA No. 607, do hereby certify:</p> <p>6</p> <p>7 That the proceedings were taken down</p> <p>8 by me in shorthand at the time and place</p> <p>9 herein set forth and thereafter transcribed,</p> <p>10 and the same is a true and correct and</p> <p>11 complete transcript of said proceedings to the</p> <p>12 best of my skill and ability.</p> <p>13</p> <p>14 IN WITNESS WHEREOF, I have hereunto</p> <p>15 subscribed my name this 22nd day of May 2019.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <hr/> <p>20 Jessica D Archibald</p> <p>21 Official Reporter, CSR(A)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 351</p>																																			
<p>1 D. Berardo</p> <p>2 VIDEOGRAPHER: Okay. This concludes</p> <p>3 today's deposition. Going off record at</p> <p>4 7:40.</p> <p>5</p> <p>6</p> <p>7 (PROCEEDINGS ADJOURNED AT 7:40 P.M.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 //</p> <p>25 //</p>	<p>Page 350</p> <p>1</p> <p>2</p> <p>3 INDEX OF EXAMINATIONS:</p> <table> <thead> <tr> <th>EXAMINATION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>MR. THOMAS</td> <td>6</td> </tr> <tr> <td>MS. LESTRADE</td> <td>327</td> </tr> <tr> <td>MR. THOMAS</td> <td>348</td> </tr> </tbody> </table> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 EXHIBITS:</p> <table> <thead> <tr> <th>NUMBER</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>Exhibit 86</td> <td>Documents DEFS08824 to DEFS08830; Exhibit Berardo L</td> <td>225</td> </tr> <tr> <td>Exhibit 87</td> <td>Berardo Exhibit O</td> <td>311</td> </tr> <tr> <td>Exhibit 88</td> <td>Berardo Exhibit P</td> <td>311</td> </tr> <tr> <td>Exhibit 89</td> <td>Berardo Exhibit I</td> <td>311</td> </tr> <tr> <td>Exhibit 90</td> <td>Berardo Exhibit J</td> <td>311</td> </tr> <tr> <td>Exhibit 91</td> <td>Berardo Exhibit N</td> <td>311</td> </tr> <tr> <td>Exhibit 92</td> <td>Berardo Exhibit A</td> <td>311</td> </tr> <tr> <td>Exhibit 93</td> <td>Berardo Exhibit X</td> <td>311</td> </tr> </tbody> </table> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p>	EXAMINATION	PAGE	MR. THOMAS	6	MS. LESTRADE	327	MR. THOMAS	348	NUMBER	DESCRIPTION	PAGE	Exhibit 86	Documents DEFS08824 to DEFS08830; Exhibit Berardo L	225	Exhibit 87	Berardo Exhibit O	311	Exhibit 88	Berardo Exhibit P	311	Exhibit 89	Berardo Exhibit I	311	Exhibit 90	Berardo Exhibit J	311	Exhibit 91	Berardo Exhibit N	311	Exhibit 92	Berardo Exhibit A	311	Exhibit 93	Berardo Exhibit X	311	<p>Page 352</p>
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